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CHAPTER 9

WATER CONSERVANCY ACT

Section		Section	
73-9-1.	Declaration of benefits and policy.		and conditions of contracts —
73-9-2.	Short title of act — Title of districts and bonds — Requirements as to publication — Definitions.		Use of revenues.
73-9-3.	District courts vested with jurisdiction to establish water conservancy districts — Limitation of powers.	73-9-13.6.	Franchise not required.
73-9-4.	Establishment of district — Filing of petition — Signatures — Withdrawal by signer — Contents of petition — Effect of defects.	73-9-14.	Subdistricts — Organization — Authority — Bonds — Board of directors — Powers — Validation of proceedings — Separability clause.
73-9-5.	Bond to be filed with petition.	73-9-14.5.	Inclusion of existing district in another district — Powers and authority of districts — Contracts between districts — Public corporations within districts.
73-9-6.	Time and place for hearing — Jurisdiction of district court — Court not to be disqualified.	73-9-15.	District board may levy and collect taxes and special assessments — Classification of methods.
73-9-7.	Protest petition — Signatures — Filing — Objections — Hearing and determination — Decree establishing district — Meetings — Dismissal of petition or proceedings — Finality and conclusiveness of order — Appeal.	73-9-16.	Levy and collection of taxes under class A — Rate of levy.
73-9-8.	Findings and decree to be filed — Fees.	73-9-17.	Board may sell or lease water to municipalities upon petition — Fix rates — Levy and collection of special assessments under class B.
73-9-9.	Board of directors — Selection of members — Number — Qualifications — Terms — Vacancies — Surety bonds — Meetings — Reports.	73-9-18.	Board may sell or lease water to irrigation districts — Levy and collection of special assessments under class C.
73-9-10.	Directors to take oath — Choose chairman, president, and secretary — Compensation.	73-9-19.	Board may sell or lease water to persons and private corporations on petition — Levy and collection of taxes under class D.
73-9-11.	Quorum.	73-9-20.	Additional taxes and assessments to pay deficiencies.
73-9-12.	Duties of secretary — Board may employ chief engineer, attorney and other employees.	73-9-21.	Objections to assessments — Hearings — Procedure — Appeal.
73-9-13.	Powers of board of district.	73-9-22.	Officials charged with duty to collect taxes — Taxes levied create equal lien.
73-9-13.1.	Who may enter into contracts — Permissible purposes of contracts — Agreements and leases — Elections for water purchase contracts.	73-9-23.	Tax sales.
73-9-13.2.	Contracts with other states.	73-9-24.	Property exempt from assessments.
73-9-13.3.	Restoration of affected street or highway — District subject to certain rules of county, city, or town.	73-9-25.	Board may dispose of water under term contracts.
73-9-13.4.	Plans — Available for public inspection — Contents.	73-9-26.	Liens to secure payment of annual installments.
73-9-13.5.	Utilization or distribution of electric power — Subject to terms	73-9-27.	Creation of sinking fund.
		73-9-28.	Powers of board in distribution of water.
		73-9-28.1.	Rulemaking and enforcement power of board.
		73-9-29.	Change of boundaries — Procedure — Petitions for inclusion

Section		Section	
	within district — Requirements — Notice — Hearing — Petition protesting inclusion — Hearing — Appeal — Annexation — Procedure — Notice — Hearing — Objections — Order of inclusion — Findings and decrees — Appeal.	73-9-36.	Board may petition district court for judicial determination of its acts — Powers — Taxes — Contracts.
73-9-30.	Petition for exclusion of lands in district — Procedure — Court order.	73-9-37.	Due notice — Jurisdiction of district court not lost for failure to give.
73-9-31.	Contracts providing for payment in installments — Issuance and sale of bonds — Sinking fund — Covenants — Default — Revenue obligations — Refunding bonds.	73-9-38.	Cases hereunder to be heard at earliest practicable moment.
73-9-32.	Election on issuance of bonds or incurring contract indebtedness or obligation — When required.	73-9-39.	Act to be liberally construed.
73-9-32.5 to 73-9-34.	Repealed.	73-9-40.	Partial invalidity — Savings clause.
73-9-35.	Majority authorized issuance of bonds — Resubmission of proposition.	73-9-41.	Acts in conflict declared nonoperative as to this act.
		73-9-42.	Validation of proceedings— Changes in validated contracts, bond proceedings or bonds authorized.
		73-9-43.	Validation of proceedings and actions — Changes in validated contracts, bond proceedings or bonds authorized.

73-9-1. Declaration of benefits and policy.

It is declared that to provide for the conservation and development of the water and land resources of the state of Utah and for the greatest beneficial use of water within this state, the organization of water conservancy districts and the construction or works as herein defined by such districts are a public use and will:

(a) Be essentially for the public benefit and advantage of the people of the state of Utah.

(b) Indirectly benefit all industries of the state.

(c) Indirectly benefit the state of Utah in the increase of its taxable property valuation.

(d) Directly benefit municipalities by providing adequate supplies of water for domestic use.

(e) Directly benefit lands to be irrigated or drained from works to be constructed.

(f) Directly benefit lands now under irrigation by stabilizing the flow of water in streams and by increasing flow and return flow of water to such streams.

(g) Promote the comfort, safety and welfare of the people of the state of Utah, and it is therefore declared to be the policy of the state of Utah:

(1) To control, make use of and apply to beneficial use all unappropriated waters in this state to a direct and supplemental use of such waters for domestic, manufacturing, irrigation, power, and other beneficial uses.

(2) To obtain from water in Utah the highest duty for domestic uses and irrigation of lands in Utah within the terms of interstate compacts or otherwise.

(3) To co-operate with the United States and agencies thereof under the federal reclamation laws or other federal laws now or hereaf-

ter enacted and to construct and finance works in the state of Utah as herein defined and to operate and maintain the same.

(4) To promote the greater prosperity and general welfare of the people of the state of Utah by encouraging the organization of water conservancy districts as provided in this act.

History: L. 1941, ch. 99, § 1; C. 1943, 100-11-1; L. 1949, ch. 95, § 1.

Cross-References. — Drainage districts, § 19-1-1 et seq.

Irrigation districts, § 73-7-1 et seq.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

Nature of district.

Origin of act.

Proceedings to create district.

Constitutionality.

This act, at least prior to 1949 amendment, is constitutional. It does not violate the due process clause; furthermore, this act does not violate Art. XI, §§ 5 and 6 of state Constitution, or Art. XIV, §§ 3 and 4 thereof, as these constitutional prohibitions apply only to cities, towns and villages and subdivisions thereof, and do not apply to water conservancy districts. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944), following decisions in Colorado, New Mexico and Ohio. For discussion of the due process clause as applied to this act, see opinion of Mr. Chief Justice Wolfe.

From the declaration of policy in this section it is evident that the Water Conservancy Act is intended to apply to all portions of the state, and is available to all persons seeking to take advantage of its provisions. Accordingly, such a law is a general and not a special law and, therefore, does not violate Art. VI, § 26, of the Constitution of Utah. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

Nature of district.

Water conservancy district is not a municipi-

ality. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

A water conservancy district is an arm of the government separate and distinct from any municipality, with powers and rules of its own, and the mere fact that its territorial boundaries may encompass the territorial boundaries of a municipality does not make it a part of the city. Its powers and objectives are distinct and separate. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

It is the public purpose for which a water conservancy district is organized that distinguishes it from drainage or irrigation districts. The public purpose for which a water conservancy district is organized inures to the benefit of the public generally, and therefore the public can be charged for such benefits through general taxation. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

Origin of act.

For history of Water Conservancy Act, and its relation to laws of other states, see *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

Proceedings to create district.

The proceedings creating a water conservancy district are judicial proceedings. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

COLLATERAL REFERENCES

Utah Law Review. — Note, The Efficient Use of Utah's Irrigation Water: Increased Transferability of Water Rights, 1975 Utah L. Rev. 158.

Journal of Energy Law and Policy. — A Primer of Utah Water Law: Part II, 6 J. Energy L. & Pol'y 1 (1985).

Natural Resources Journal. — Is Public Intervention in Water Resources Development Conducive to Economic Efficiency?, 6 Natural Resources J. 60.

Rocky Mountain Law Review. — Water Conservancy Districts (Quasi-Municipal Corporations with General Taxing Powers), 22 Rocky Mt. L. Rev. 432.

C.J.S. — 94 C.J.S. Waters § 243(1).

A.L.R. — Necessity and sufficiency of environmental impact statements under § 102(2)(C) of National Environmental Policy Act of 1969 (42 USCS § 4332(2)(C)) in cases involving water and waterworks projects, 67 A.L.R. Fed. 54.

Key Numbers. — Waters and Water
Courses ⇌ 183½.

73-9-2. Short title of act — Title of districts and bonds — Requirements as to publication — Definitions.

This act may be known and cited as "Water Conservancy Act"; the districts created hereunder may be termed "Water Conservancy Districts"; and the bonds which may be issued hereunder may be called "Water Conservancy Bonds," and such designation may be engraved or printed on their face. Whenever the term "publication" is used in this act and no manner specified therefor, it shall be taken to mean once a week for three consecutive weeks in at least one newspaper of general circulation in each county wherein such publication is to be made. It shall not be necessary that publication be made on the same day of the week in each of the three weeks, but not less than fourteen days (excluding the day of the first publication) shall intervene between the first publication and the last publication and publication shall be complete on the date of the last publication.

Whenever the term "person" is used in this act, and not otherwise specified, it shall be taken to mean a person, firm, copartnership, association or corporation, other than a county, town, city, city and county, or other political subdivision. Similarly, the words "public corporation" shall be taken to mean counties, city and counties, towns, cities, school districts, metropolitan water districts, irrigation districts, water districts, park districts, subdistricts, and all other governmental agencies of this state, clothed with the power of levying or providing for the levy of general or special taxes or special assessments; and any political subdivision of another state of the United States.

Whenever the word "board" is used in this act, and not otherwise specified, it shall be taken to mean the board of directors of the district.

Whenever the term "works" is used in this act, it shall, unless otherwise specified, be held to mean dams, storage reservoirs, compensatory and replacement reservoirs, canals, conduits, pipelines, drains, tunnels, power plants and any and all works, facilities, improvements, and property necessary or convenient for the supplying of water for domestic, irrigation, power, milling, manufacturing, mining, metallurgical and any and all other beneficial uses, and for otherwise accomplishing the purposes of this act.

Whenever the term "court" is used in this act, and not otherwise specified, it shall be taken to mean the district court of that judicial district of the state of Utah wherein the petition for the organization of a water conservancy district shall be filed.

Whenever the term "property" is used in this act, it shall, unless otherwise specified, be held to mean real estate and personal property.

Whenever the term "land" or "real estate" is used in this act, it shall, unless otherwise specified, be held to mean real estate, as the words "real estate" are defined by the laws of the state of Utah, and shall embrace all railroads, tramroads, highways, electrical roads, street and interurban railroads, roads, streets, and street improvements, telephone, telegraph, and transmission lines, gas, sewer and water systems, water rights, pipelines and rights of ways for public service corporations and all other real property whether held for public or private use.

Whenever the term "land" or "property" is used in this act with reference to benefits, appraisals, assessments, or taxes, public corporations shall as political entities, according to benefits received, be considered as included in such reference in the same manner as "land" or "property."

History: L. 1941, ch. 99, § 2; C. 1943, 100-11-2; L. 1949, ch. 95, § 1; 1977, ch. 282, § 1.

NOTES TO DECISIONS

Constitutionality.

This section is constitutional; it does not deny due process of law, for it provides for notice of hearing to all persons interested, and

such persons are given an opportunity to come into court and object to the creation of the district. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

COLLATERAL REFERENCES

A.L.R. — What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official no-

tices and the like in such newspaper, 24 A.L.R.4th 822.

73-9-3. District courts vested with jurisdiction to establish water conservancy districts — Limitation of powers.

The district court sitting in and for any county in this state or any judge thereof in vacation is hereby vested with jurisdiction, power and authority when the conditions stated in Section 73-9-4 are found to exist, to establish water conservancy districts which may be entirely within or partly within and partly without the judicial district in which said court is located, for conserving, developing and stabilizing supplies of water for domestic, irrigation, power, manufacturing and other beneficial uses as herein provided; provided, however, that the terms of this act shall not be construed to confer upon such district court jurisdiction to hear, adjudicate and settle questions concerning the priority of appropriation of water between districts organized under this act and ditch companies and other owners of ditches drawing water for irrigation purposes from the same stream or its tributaries, and jurisdiction to hear and determine such questions of law and questions of right growing out of or in any way involved or connected therewith, are expressly excluded herefrom and shall be determined in the proper county as otherwise provided by the laws of the state of Utah.

History: L. 1941, ch. 99, § 3; C. 1943, 100-11-3.

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(2).

Key Numbers. — Waters and Water Courses ⇌ 183½.

73-9-4. Establishment of district — Filing of petition — Signatures — Withdrawal by signer — Contents of petition — Effect of defects.

(1) Before any water conservancy district is established under this chapter, a petition must be filed in the clerk's office of the court vested with jurisdiction, in a county in which all or part of the lands within the proposed water conservancy district are situated.

(2) A petition for the establishment of a water conservancy district situated in a single county must be signed by the following number of owners of land within the county and within the proposed district:

(a) not fewer than 20% of the owners of land outside the limits of any incorporated city or town; and

(b) not fewer than 5% of the owners of land within the limits of each incorporated city or town.

(3) A petition for the establishment of a water conservancy district situated in more than one county must be signed by the following number of owners of land within each county and within the proposed district:

(a) not fewer than 10%, or 500, whichever is less, of the owners of land outside the limits of any incorporated city or town; and

(b) not fewer than 5% of the owners of land within the limits of each incorporated city or town.

(4) The property identification number of each tract of land which is owned by a petitioner and is within the proposed water conservancy district must be listed opposite the petitioner's name. The taxable value of each petitioner's lands that are listed, together with the improvements on those lands, must be at least \$10,000.

(5) If a petitioner signs a petition, both as owner of land situated within and outside a municipality, the petitioner's name will be counted only as an owner of land situated outside a municipality. A signing petitioner is not permitted, after the filing of the petition, to withdraw the petitioner's name.

(6) A district may not be formed under this chapter unless the taxable value of land within the proposed district, together with improvements on the land, exceeds \$500,000.

(7) The petition shall set forth:

(a) the proposed name of the district;

(b) that property within the proposed district will be benefited by the accomplishment of the purposes enumerated in Section 73-9-3;

(c) a general description of the purpose of the contemplated improvement and of the territory to be included in the proposed district;

(d) a general designation of the district's divisions and the number of directors proposed for each division; and

(e) a request to organize the district by the name proposed.

(8) The description of a water conservancy district's territory, as set forth in the petition, need not be given by metes and bounds or by legal subdivisions, but it must be sufficiently detailed to enable a property owner to ascertain whether his property is within the territory proposed to be organized as a district.

(9) The territory of a proposed water conservancy district:

(a) may include area within an existing water conservancy district; and

(b) need not be contiguous, provided it is so situated that the organization of a single district for the territory described is calculated to promote one or more of the purposes enumerated in Section 73-9-3.

(10) No petition with the requisite signatures may be declared null and void on account of alleged defects, but the court may at any time permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory or other errors. Similar petitions or multiple copies of the same petition:

(a) may be filed and together will be regarded as one petition; and

(b) if filed prior to the hearing on the first petition, will be considered by the court to be filed with the first petition.

(11) In determining whether the requisite number of landowners have signed the petition, the court will be governed by the names as they appear upon the tax roll, which is prima facie evidence of land ownership.

History: L. 1941, ch. 99, § 4; C. 1943, 100-11-4; L. 1949, ch. 95, § 1; 1961, ch. 168, § 1; 1988, ch. 3, § 258; 1988, ch. 176, § 1.

Amendment Notes. — The 1988 amendment by ch. 3, effective February 9, 1988, inserted the subsection designations (1) to (3); substituted "a taxable value" for "an assessed value" twice in the second sentence of Subsection (1); substituted "taxable value" for "assessed valuation" in Subsection (3); designated former Subsections (1) to (6) as Subsections (4)(a) to (4)(f); substituted "taxable value" for "assessed value" in Subsection (4)(d); inserted subsection designations (5) and (6); and made minor stylistic changes throughout.

The 1988 amendment by ch. 176, effective April 25, 1988, added subsection designations; substituted "this chapter" for "this act" in Subsection (1); rewrote the provisions in Subsections (2) to (4), deleting "or one hundred whichever is the lesser" after "not fewer than five percent" in Subsections (2)(b) and (3)(b), insert-

ing "The property identification number of" in Subsection (4), and substituting "\$10,000" for "three hundred dollars" in Subsection (4); substituted "chapter" for "act," "taxable value" for "assessed valuation," and "\$500,000" for "fifty thousand dollars" in Subsection (6); deleted a provision from Subsection (7) that read, "the assessed value of all irrigated land within the boundaries of the proposed district"; added Subsection (9)(b); and made numerous stylistic changes throughout the section.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Retrospective Operation. — Laws 1988, ch. 3, § 269 provides that the act "has retrospective operation to January 1, 1988."

Cross-References. — Authority of state or agency thereof, county, city or town to take necessary steps to bring its land within water conservancy district, § 73-1-19.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

Qualifications of signers of petition.

Constitutionality.

This section, at least prior to 1949 amendment, is constitutional; it does not deny due process of law, nor does it violate Art. I, § 2 of the Utah Constitution. *Patterick v. Carbon*

Water Conservancy Dist., 106 Utah 55, 145 P.2d 503 (1944).

Qualifications of signers of petition.

It is within the discretion of the legislature to prescribe the qualifications of the signers of the petition. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

73-9-5. Bond to be filed with petition.

At the time of filing the petition or at any time subsequent thereto, and prior to the time of hearing on said petition, a bond shall be filed, with security approved by the court, sufficient to pay all expenses connected with the proceedings in case the organization of the district be not effected. If at any time during the proceeding the court shall be satisfied that the bond first executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed to be not less than ten days distant, and upon failure of the petitioner to execute the same, the petition shall be dismissed.

History: L. 1941, ch. 99, § 5; C. 1943, 100-11-5.

73-9-6. Time and place for hearing — Jurisdiction of district court — Court not to be disqualified.

Immediately after the filing of such petition, the court wherein such petition is filed or a judge thereof in vacation, shall by order fix a place and time, not less than sixty days nor more than ninety days after the petition is filed, for hearing thereon, and thereupon the clerk of said court shall cause notice by publication to be made of the pendency of the petition and of the time and place of hearing thereon; the clerk of said court shall also forthwith cause a copy of said notice to be mailed by United States registered mail to the board of county commissioners of each of the several counties having territory within the proposed district.

The district court in and for the county in which the petition for the organization of a water conservancy district has been filed shall thereafter for all purposes of this act, except as hereinafter otherwise provided, maintain and have original and exclusive jurisdiction, coextensive with the boundaries of said water conservancy district, and of land and other property proposed to be included in said district or affected by said district without regard to the usual limits of its jurisdiction.

No judge of such court wherein such petition is filed shall be disqualified to perform any duty imposed by this act by reason of ownership of property within any water conservancy district or proposed water conservancy district, or by reason of ownership of any property that may be benefited, taxed or assessed therein.

History: L. 1941, ch. 99, § 6; C. 1943, 100-11-6.

NOTES TO DECISIONS**Constitutionality.**

This section is constitutional; it does not deny due process of law, for it provides for notice of hearing to all persons interested, and

such persons are given an opportunity to come into court and object to the creation of the district. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

73-9-7. Protest petition — Signatures — Filing — Objections — Hearing and determination — Decree establishing district — Meetings — Dismissal of petition or proceedings — Finality and conclusiveness of order — Appeal.

(1) At any time after the filing of a petition for the organization of a conservancy district, and not less than 30 days prior to the time fixed by the order of the court for the hearing upon the petition, a petition protesting the creation of the district may be filed in the office of the clerk of the court where the proceeding for the creation of the district is pending. The petition must be signed by not fewer than 20% of the owners of the lands in the proposed district outside the limits of any incorporated city or town, who have not signed the petition for creating the district. The aggregate taxable value of their lands, together with improvements, shall equal at least 20% of the total taxable value of land in the proposed district situated outside the limits of incorporated cities and towns. The protesting petition must also be signed by not fewer than 20% of owners of lands within the limits of each incorporated city and town situated in the proposed district who have not signed the petition for creating the district. The aggregate taxable value of their lands, together with improvements, shall equal at least 20% of the total taxable value of land within the limits of each incorporated city and town in the proposed district. The signers of the protesting petition shall state in the petition:

(a) a description of the land owned by each signer; and

(b) the land's value as shown by the last preceding assessment.

(2) If a proposed water conservancy district will consist of more than one county, the lands within a county shall be eliminated from the petition for organization of the district if a protesting petition is filed, signed by the percentage of owners of land specified in Subsection (1) of the requisite taxable value located in the protesting county.

(3) If a petitioner signs the petition as an owner of land situated both inside and outside a municipality, his name shall be counted only as an owner of land situated outside a municipality.

(4) After the protesting petition is filed, the clerk of the court shall make as many certified copies of the petition, including the signatures, as there are counties in which any part of the proposed district extends, and shall send a certified copy to the county treasurer of each of the counties. Prior to the hearing date each county treasurer shall determine from the tax rolls of his county, and certify to the district court under his official seal, the total valuation of the tracts of land listed in the protest, situated in the proposed district within his county. On the hearing date of the original petition, if it appears to the court from the certificate and evidence that the protesting petition is not signed by the requisite number of owners of land and of the requisite value as set forth in Subsection (1), the court shall:

(a) dismiss the protesting petition; and

(b) proceed with the original hearing as provided in this section.

(5) If the court finds that the protesting petition is signed by the requisite number of owners of lands, and of the requisite values, the court shall dismiss the original petition for the creation of the district. The finding and order of

the court on the issues regarding total valuation, the genuineness of the signatures, and all matters of law and fact incident to the determination shall be final and conclusive on all parties in interest whether appearing or not, unless within 30 days from entry of the order of dismissal an appeal is taken to the Supreme Court as provided in this section.

(6) (a) If any owner of real property in the proposed district did not individually sign a petition for the organization of a conservancy district, and objects to the organization and incorporation of the district, he may file an objection to the organization and incorporation of the district on or before the date set for the hearing.

(b) The objection is limited to a denial of the statements in the petition and shall be heard by the court as an advanced case without unnecessary delay.

(7) (a) The court shall, by order, adjudicate all questions of jurisdiction, declare the district organized, and give it a corporate name, if it appears at the hearing that:

(i) a petition for the organization of a water conservancy district has been signed and presented pursuant to this chapter;

(ii) the allegations of the petition are true; and

(iii) no protesting petition has been filed, or if filed has been dismissed as provided in this section.

(b) The district shall be a political subdivision of the state of Utah and a body corporate with all the powers of a public or municipal corporation.

(8) (a) In the decree establishing the district, the court shall designate the place where the office or principal place of the district shall be located, which shall be within the corporate limits of the district, and may be changed by order of the court from time to time.

(b) The official records and files of the district shall be kept in the district office.

(c) The regular meetings of the board shall be held at the office or place of business, but may be held at another convenient place. If a change in meeting place is proposed and the time and place agreed upon by a majority of directors at a regular meeting of the board held at the district's office or principal place of business, no other public notice of the changed meeting is required. If, however, a change in the meeting place of the board is set at a place other than the district office or principal place of business, and the time and place are not fixed in a prior meeting of the board at its office or principal place of business during a regular meeting of the board, notice of the time and place of the meeting shall be given by:

(i) posting notice at the district's office or principal place of business at least three days before the meeting; and

(ii) by publication of a notice of the time and place of the meeting in one issue of a newspaper with general circulation within the district at least three days before the meeting.

(9) The court shall dismiss the proceedings and adjudge the costs against the signers of the petition proportionately and equitably if it finds that:

(a) the petition has not been signed and presented pursuant to this chapter; or

(b) the material facts are not as set forth in the petition.

(10) An appeal to the Supreme Court from the order of dismissal may be taken as provided in this section. Nothing in this chapter shall be construed to

prevent the filing of a subsequent petition for similar improvements or water conservancy districts, and the right to renew the proceedings is expressly granted.

(11) If an order is entered establishing the district, the order is final and shall conclusively establish the regular organization of the district against all persons, unless an appeal is taken to the Supreme Court as provided in this section or quo warranto proceedings attacking the order are instituted on behalf of the state by the attorney general within three months of the order. The organization of the district shall not be directly nor collaterally questioned in any suit, action, or proceeding except as expressly authorized in this chapter.

(12) Any petitioner, protestant, or objector may appeal to the Supreme Court from the order of the district court entered pursuant to this section. Those appeals shall be taken within 30 days from the entry of the order in accordance with the Utah Rules of Civil Procedure.

History: L. 1941, ch. 99, § 7; C. 1943, 100-11-7; L. 1945, ch. 135, § 1; 1949, ch. 95, § 1; 1961, ch. 168, § 2; 1988, ch. 3, § 259; 1988, ch. 63, § 1.

Amendment Notes. — The 1988 amendment by ch. 3, effective February 9, 1988, substituted "taxable value" for "assessed value" where the term appears in the first and second paragraphs.

The 1988 amendment by ch. 63, effective April 25, 1988, added subsection designations to the previously undesignated provisions of the section; inserted "protesting the creation of the district" in the first sentence in Subsection (1); substituted "send a certified copy to" for "place in the hands of" near the end of the first sentence and substituted "evidence" for "such

other evidence as may be adduced by any party in interest" in the third sentence in Subsection (4); added the material in Subsection (8)(c) beginning with the second sentence in the introductory paragraph; added "within three months of the order" at the end of the first sentence in Subsection (11); and made numerous stylistic changes throughout the section.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Retrospective Operation. — Laws 1988, ch. 3, § 269 provides that the act "has retrospective operation to January 1, 1988."

Cross-References. — Establishment of water conservancy districts, notice to State Tax Commission, § 11-12-1.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.
Nature of district.

Constitutionality.

This section, at least prior to 1949 amendment, is constitutional; it does not deny due process of law, for it provides for notice of hearing to all persons interested, and such persons are given an opportunity to come into court and object to the creation of the district. Nor does section violate due process clause because there is no provision by which court can modify boundaries of proposed district, nor on the further ground that it cannot be determined that individual properties or sections of properties will benefit by creation of district. The act does

make provision for a hearing as to whether or not lands included in the proposed boundaries will be benefited. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

This section, as it read prior to its amendment in 1945, was unconstitutional insofar as it denied or failed to provide for an appeal from a district court judgment. The right of appeal is now provided for in this section as amended. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

Nature of district.

A water conservancy district is a quasi-municipal corporation. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

73-9-8. Findings and decree to be filed — Fees.

Within 30 days after the said district has been declared a corporation by the court, the clerk of the court shall transmit to the Division of Corporations and Commercial Code and to the county clerk and recorder in each of the counties having lands in said district, copies of the findings and the decree of the court incorporating said district. The same shall be filed with the Division of Corporations and Commercial Code, pursuant to the general laws concerning corporations, and copies shall also be filed in the office of the county clerk and recorder of each county in which a part of the district may be, where they shall become permanent records; and the clerk and recorder in each county shall receive a fee of \$1 for filing and preserving the same, and the lieutenant governor shall receive for filing said copies such fees as now are or hereafter may be provided by law for like services in similar cases.

History: L. 1941, ch. 99, § 8; C. 1943, divisions and Commercial Code, Chapter 1a of Title 13.
100-11-8; L. 1984, ch. 68, § 92.

Cross-References. — Division of Corpora-

73-9-9. Board of directors — Selection of members — Number — Qualifications — Terms — Vacancies — Surety bonds — Meetings — Reports.

(1) Within 45 days after entry of the decree incorporating the district, the board of directors shall be selected as follows:

(a) Districts which consist of a single county shall have directors appointed by the county governing body.

(b) Districts consisting of more than a single county shall have directors appointed by the governor with the advice and consent of the Senate from nominees submitted as follows:

(i) In a division composed solely of incorporated cities, each city within the division shall submit two nominees per director.

(ii) In all other divisions, the county governing body of the county in which the division is located shall submit three nominees per director.

(iii) If a director represents a division located in more than one county, the county governing bodies of those counties shall collectively compile the list of three nominees.

(c) In districts where substantial water is allocated for irrigated agriculture, one director appointed in that district must be a person who owns irrigation rights and uses those rights as part of his livelihood.

(2) (a) The terms of office shall be fixed as follows:

(i) approximately one-fourth of the directors first appointed, after organization of the district, shall serve for one year;

(ii) approximately one-fourth of the directors first appointed shall serve for two years;

(iii) approximately one-fourth of the directors first appointed shall serve for three years; and

(iv) the remainder of the directors shall serve for four years. All succeeding terms of office shall be four years.

(b) The court shall establish the number, representation, and votes of directors for each district in the decree creating the district. The board of

directors of the district shall consist of not more than 11 persons who are residents of the district. If the district consists of five or more counties, the board of directors shall consist of not more than 21 persons who are residents of the district.

(c) The secretary of the board shall give written notice of vacancies in any office of director and of the expiration date of terms of office of directors to the county governing body in single county districts and to the nominating entities and the governor in all other districts at least 90 days before the expiration date, and such notice shall be published in a newspaper having general circulation.

(d) Upon receipt of the notice of the expiration of a director's term or notice of a vacancy in the office of director, the city or the county governing body shall nominate candidates to fill the unexpired term of office pursuant to Subsection (1). If the entity charged with nominating candidates for appointment by the governor has not submitted the list of nominees within 90 days after service of the notice, the governor shall make the appointment from qualified candidates without consultation with the city or the county governing body. If the governor fails to appoint, the incumbent shall continue to serve until his successor is appointed and qualified. Appointment by the governor vests in the appointee, upon qualification, the authority to discharge the duties of director, subject only to the advise and consent of the Senate.

(e) Each director shall hold office during the term for which he is appointed and until his successor is duly appointed and has qualified.

(3) Each director shall furnish a corporate surety bond at the expense of the district, in amount and form fixed and approved by the court, conditioned for the faithful performance of his duties as a director.

(4) (a) An annual meeting of the board of directors shall be held on a date to be fixed by the court in the order incorporating the district. The board shall also hold special meetings at least quarterly.

(b) A report of the business transacted during the preceding year by the district, including a financial report prepared by certified public accountants, shall be filed with:

- (i) the clerk of the district court;
- (ii) the governing bodies of counties with lands within the district;
- and
- (iii) cities charged with nominating directors.

(c) No more than 14 days and no less than five days prior to the annual meeting, the district shall have published at least once in a newspaper having general circulation within the district:

- (i) a notice of the annual meeting;
- (ii) a summary of its financial report; and
- (iii) the names of the directors.

(d) Subsection (c) does not apply to districts with annual revenues of less than \$1,000,000.

History: L. 1941, ch. 99, § 9; C. 1943, 100-11-9; L. 1949, ch. 95, § 1; 1961, ch. 168, § 3; 1983, ch. 350, § 1; 1988, ch. 63, § 2; 1989, ch. 199, § 1.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, substituted "the

county in which the division is located" for "each county within the district which is entitled to representation under the decree creating the district" in Subsection (1)(b)(ii); designated the formerly undesignated final paragraph of Subsection (1)(b) as Subsection

(1)(b)(iii) and in that subsection inserted "a division located in"; designated the former second undesignated paragraph in the section as present Subsection (1)(c); substituted the provisions of present Subsection (2)(a) for former Subsection (2), which read, "Each year approximately one-third of the directors shall be appointed for three-year terms"; designated the former third to sixth undesignated paragraphs as present Subsections (2)(b) to (2)(f); inserted "vacancies in any office of director and of" and substituted "90" for "60" in Subsection (2)(c); substituted the present provisions of Subsection (2)(d) for a previous provision that read "The board of county commissioners in single-county districts and the governor in all other districts shall fill all vacancies which may occur on the board"; inserted "the governing bodies of counties with lands within the district, and cities charged with nominating directors"

in Subsection (2)(f); and made various stylistic changes.

The 1989 amendment, effective April 24, 1989, deleted the (1) designation preceding Subsection (1)(a) and added it to the beginning of the section; substituted "county governing body" for "board of county commissioners" where the term appears; added the language beginning "and such notice" to the end of Subsection (2)(c); substituted "of" for "or" preceding "office" in the first sentence of Subsection (2)(d); divided former Subsection (2)(e) into present Subsections (2)(e) and (3), deleting "and" and making punctuation changes; redesignated former Subsection (2)(f) as present Subsections (4)(a) and (4)(b); subdivided and made punctuation changes in Subsection (4)(b); deleted "on or before the date of the annual meeting" from the end of Subsection (4)(b)(iii); added Subsection (4)(c); and made minor stylistic changes.

NOTES TO DECISIONS

Constitutionality.

Section, before its amendment in 1983, violated separation of powers clause of Article V, Section 1 of the state constitution because it empowered district courts to appoint members of board of directors of water conservancy districts, a power not in discharge of primary function of judiciary. *Timpanogos Planning & Water Mgt. Agency v. Central Utah Water*

Conservancy Dist., 690 P.2d 562 (Utah 1984). (Decision given prospective application only, and overruling *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944), to the extent that decision held the power of the court to appoint the board of directors of water conservancy districts was constitutionally sound).

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(4).

Key Numbers. — Waters and Water Courses ⇨ 183½.

73-9-10. Directors to take oath — Choose chairman, president, and secretary — Compensation.

(1) Each director before entering upon his official duties shall take and subscribe to an oath, before an officer authorized to administer oaths, that he will support the Constitution of the United States and the state of Utah, will honestly, faithfully, and impartially perform the duties of his office, and will not be interested directly or indirectly in any contract entered into by the district. This oath shall be filed in the office of the clerk of the district court.

(2) Upon taking the oath, the board shall choose one of their number as chairman of the board and president of the district, and shall elect some suitable person, who may or may not be a member of the board, as secretary of the board and the district. The board shall adopt a seal. The board shall keep in a well-bound book a record of all of its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts. This book shall be open to inspection of all owners of property in the district, as well as to all other interested parties.

(3) Each member of the board shall receive as compensation for attending the regular meetings of the board a sum, not to exceed \$1,000 per annum, payable monthly, and necessary traveling expenses actually expended while engaged in the performance of his duties. District boards may, in addition, provide compensation on a per diem basis, not to exceed \$50 per day, for the performance of other duties assigned to directors by the board.

History: L. 1941, ch. 99, § 10; C. 1943, 100-11-10; L. 1977, ch. 282, § 2; 1985, ch. 184, § 1.

Amendment Notes. — The 1985 amendment inserted the subsection designations (1) through (3); substituted "entered into by the district" for "let by said district" at the end of the first sentence of Subsection (1); substituted "the district court" for "said court in the original case" in the last sentence of Subsection (1); deleted "secretary of the board and of the dis-

trict" after "person" in the first sentence of Subsection (2); added "as secretary of the board and the district" at the end of the first sentence of Subsection (2); substituted "for attending the regular meetings of the board a sum, not to exceed \$1,000" for "for his service such sum as shall be ordered by the court, not in excess of the sum of \$1,000" in the first sentence of Subsection (3); added the last sentence of Subsection (3); and made minor changes in phraseology.

73-9-11. Quorum.

A majority of the directors shall constitute a quorum and a concurrence of a majority of those in attendance, in any matter, within their duties, shall be sufficient for its determination, except as otherwise herein provided.

History: L. 1941, ch. 99, § 11; C. 1943, 100-11-11.

73-9-12. Duties of secretary — Board may employ chief engineer, attorney and other employees.

The secretary shall be custodian of the records of the district and of its corporate seal, and shall assist the board in such particulars as it may direct in the performance of its duties. The secretary shall attest, under the corporate seal of the district, all certified copies of the official records and files of the district that may be required of him by this act or by any person ordering the same and paying the reasonable cost of transcription, and any portion of the record so certified and attested shall prima facie import verity. The secretary shall serve also as treasurer of the district, unless a treasurer is otherwise provided for by the board. The board may also employ a chief engineer, who may be an individual, copartnership or corporation; an attorney, and such other engineers, attorneys and other agents and assistants as may be needful; and may provide for their compensation which, with all other necessary expenditures, shall be taken as a part of the cost or maintenance of the improvement. The chief engineer shall be superintendent of all the works and improvements, and shall make a full report to the board each year, or oftener if required by the board, and may make such suggestions and recommendations to the board as he may deem proper. The secretary and treasurer and such other agents or employees of the district as the court may direct shall furnish corporate surety bonds, at the expense of the district, in amount and form fixed and approved by the court, conditioned upon the faithful performance of their respective duties.

History: L. 1941, ch. 99, § 12; C. 1943,
100-11-12.

73-9-13. Powers of board of district.

The board shall have power on behalf of the district:

- (1) to have perpetual succession;
- (2) to take by appropriation, grant, purchase, bequest, devise, or lease, and to hold and enjoy water, waterworks, water rights, sources of water supply, and any real and personal property within or without the district necessary or convenient to fully exercise its powers;
- (3) to sell, lease, encumber, alienate, or otherwise dispose of water, waterworks, water rights, and sources of water supply for any beneficial use within or without the district, and to fix rates and terms for the sale, lease, or other disposal of water;
- (4) to acquire, construct, operate, control, and use any works or facilities within or without the district necessary or convenient to exercise its powers;
- (5) to have and to exercise the power of eminent domain, as provided by law, to take any property necessary to exercise powers granted; however, the district shall not exercise the power of eminent domain to acquire title to or beneficial use of vested water rights for transmountain diversion, and the district shall not have the power to carry or transport water in transmountain diversion, the title to which has been acquired by any municipality by virtue of eminent domain proceedings;
- (6) to construct, establish, or maintain works or facilities:
 - (a) across or along any public street or highway;
 - (b) in, upon, or over any vacant public lands which are now, or may become, the property of this state in accordance with Title 65 [Title 65A]; or
 - (c) across any streams of water or watercourses;
- (7) to contract with any agency of the United States, person, or corporation, public or private, for the construction, preservation, operation, or maintenance of tunnels, drains, pipelines, reservoirs, regulating basins, diversion canals and works, dams, power plants, and any necessary incidental works;
- (8) to acquire perpetual rights to the use of water from the works referred to in Subsection (7) and to sell perpetual rights to the use of water from those works to persons and corporations, public and private;
- (9) to list in separate ownership the lands within the district which are susceptible of irrigation from district sources and to make an allotment of water to all those lands, which allotment of water shall not exceed the maximum amount that the board determines could be beneficially used on the lands;
- (10) to levy assessments, as provided for by this chapter, against lands within the district to which water is allotted on the basis of:
 - (a) a uniform district-wide value per acre-foot of irrigation water;or
 - (b) a uniform unit-wide value per acre-foot of irrigation water provided that the board divides the district into units and fixes a different value per acre-foot of water in the respective units;

(11) to fix rates for the sale, lease, or other disposal of water, other than irrigation water, at rates that are equitable, although not necessarily equal or uniform, for like classes of service;

(12) to contract for services, employ persons, and elect or appoint officers as shall be necessary and convenient to transact the district's business;

(13) to adopt and modify plans and specifications for the works for which the district was organized;

(14) to investigate and promote water development;

(15) to appropriate and otherwise acquire water and water rights within or without the state;

(16) to develop, store, and transport water;

(17) to acquire stock in canal companies, water companies, and water users' associations;

(18) to make and adopt plans for and to acquire, construct, operate, and maintain dams, reservoirs, canals, conduits, pipelines, tunnels, power plants, and any works, facilities, improvements, and property necessary or convenient for those purposes;

(19) to generate, distribute, or sell electric power from hydro electric power plants owned, operated, licensed, or leased by the district if, as determined by the board, the electric power plant was acquired or constructed as an incidental and not the primary purpose of a project for the conservation, development, storage, transportation, or distribution of water;

(20) to invest any surplus money in the district treasury pursuant to the State Money Management Act of 1974;

(21) to refund bonded indebtedness incurred by the district pursuant to rules prescribed by the board;

(22) to borrow money and to issue bonds or other evidence of indebtedness;

(23) to adopt bylaws not in conflict with the Utah Constitution and laws of the state for carrying on the business of the board and district;

(24) to construct works and improvements on land not subject to acquisition by condemnation held by the district for a term of not less than 50 years under lease, easement, or otherwise and to issue bonds to pay the costs for which bonds may be issued as in this chapter;

(25) to acquire, construct, operate, or maintain works for the irrigation of land;

(26) to sell water and water services to individual customers and to charge sufficient rates for the water and services supplied; however, no sale of water for domestic or culinary use shall be made to a customer located within the limits of any incorporated municipality without the consent of the municipality, except as provided by Subsection 73-9-31(7);

(27) to make and collect fees for customer connections to the works of the district and for permitting and supervising the making of the connections;

(28) to use the proceeds of connection charges for any lawful corporate purpose including the construction or acquisition of facilities, payment of principal of and interest on bonds, and the creation of a reserve for such purposes; and

(29) to own property for its corporate purposes within the boundaries of incorporated municipalities.

History: L. 1941, ch. 99, § 13; C. 1943, 100-11-13; L. 1949, ch. 95, § 1; 1953, ch. 132, § 1; 1957, ch. 160, § 1; 1973, ch. 191, § 1; 1977, ch. 282, § 3; 1983, ch. 348, § 1; 1984 (2nd S.S.), ch. 20, § 1; 1988, ch. 146, § 1; 1988, ch. 178, § 1.

Amendment Notes. — The 1988 amendment by ch. 146, effective April 25, 1988, inserted "hydro" and "operated, licensed, or leased" near the beginning of the first sentence in Subsection (11).

The 1988 amendment by ch. 178, effective

April 25, 1988, rewrote the section to the extent that a detailed comparison is impracticable.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Compiler's Notes. — Title 65, referred to in Subsection (6)(b), was repealed by Laws 1988, ch. 121, § 19. For present provisions, see Title 65A.

Cross-References. — State Money Management Act of 1974, § 51-7-1 et seq.

NOTES TO DECISIONS

Eminent domain.

Where the condemnation of certain land by a water conservancy district for the purpose of enlarging a reservoir caused the relocation of a state highway and the loss of traffic flow past a

tavern located on the original route, the tavern owner was not entitled to compensation for diminution in the flow of traffic. *Weber Basin Water Conservancy Dist. v. Hislop*, 12 Utah 2d 64, 362 P.2d 580 (1961).

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(4).

Key Numbers. — Waters and Water Courses ⇨ 183^{1/2}.

73-9-13.1. Who may enter into contracts — Permissible purposes of contracts — Agreements and leases — Elections for water purchase contracts.

(1) Any water conservancy district and any incorporated municipality located within or without the boundaries of the district or other district created under any law of this state are expressly authorized and empowered to enter into contracts with each other and with any other person or corporation, public or private, for any of the following purposes:

(a) the joint operation of water facilities owned by any district or municipality;

(b) the exchange of water, water rights, or facilities;

(c) the leasing of water or water facilities; or

(d) the sale of water.

(2) (a) Any agreement about the operation or use of water facilities owned by a municipality or district by another municipality or district, the joint operation of facilities, or the lease of water or water facilities, may provide for the joint use of water facilities owned by one of the contracting parties under appropriate arrangements for reasonable compensation.

(b) Any agreement may provide for the renting or loan of water by one contracting party to the other or for the sale of water by one party and its purchase by another. No limitation contained in any existing law requiring the water of any district to be supplied to its own residents on a priority basis shall be applicable to any contract made under this section.

(c) Any contract for the sale of water may run for a term of years as may be specified. The contract may require the purchasing party to pay for a minimum amount of water annually, provided the water is available, without regard to actual taking or use. The contract may provide for the payment for water sold or contracted to be sold from any of the following sources of revenue:

- (i) the general funds or other funds of the purchasing municipality or district;
- (ii) the proceeds of class B assessments imposed under the Water Conservancy Act;
- (iii) the proceeds of water distributed and sold through the distribution system of the purchasing district or municipality; or
- (iv) any combination of these sources of payment.

(d) The governing body of any municipality agreeing to purchase water under a contract, for the purpose of complying with any pertinent constitutional requirement or for any other reason, may call an election for that purpose. The election shall be conducted in the manner provided in the Utah Municipal Bond Act.

History: C. 1953, 73-9-13.1, enacted by L. 1988, ch. 178, § 2.

Effective Dates. — Laws 1988, Chapter 178 became effective on April 25, 1988, pursuant to Utah Const., Art. VI, Sec. 25.

Cross-References. — Utah Municipal Bond Act, § 11-14-1 et seq.

73-9-13.2. Contracts with other states.

(1) Any water conservancy district created under the laws of this state is expressly authorized and empowered to enter into contracts with another state or political subdivision of another state for the purpose of joint construction, operation, or ownership of the water facility.

(2) Water from any source in Utah may be appropriated and used for beneficial purposes within another state only in accordance with Section 73-2-8.

History: C. 1953, 73-9-13.2, enacted by L. 1988, ch. 178, § 3.

Effective Dates. — Laws 1988, Chapter 178

became effective on April 25, 1988, pursuant to Utah Const., Art. VI, Sec. 25.

73-9-13.3. Restoration of affected street or highway — District subject to certain rules of county, city, or town.

(1) When a district constructs, establishes, or maintains works or facilities across or along public streets or highways, it shall promptly restore any affected street or highway to its former state of usefulness as nearly as may be and may not use a street or highway in a manner which completely or unnecessarily impairs its usefulness.

(2) In the use of streets or highways, a district shall be subject to reasonable rules of a county, city, or town concerning excavation, refilling excavations, relaying pavements, and the protection of the public during periods of construction, but a district may not be required to pay any license or permit fees or file any bonds. A district may be required to pay reasonable inspection fees.

History: C. 1953, 73-9-13.3, enacted by L. 1988, ch. 178, § 4; 1989, ch. 22, § 42.

Amendment Notes. — The 1989 amendment, effective April 24, 1989, substituted "pavements" for "payments" in the first sentence of Subsection (2).

Effective Dates. — Laws 1988, Chapter 178 became effective on April 25, 1988, pursuant to Utah Const., Art. VI, Sec. 25.

73-9-13.4. Plans — Available for public inspection — Contents.

Plans and specifications for the works for which a district is organized shall be kept in the office of the district and be open to public inspection. The plans shall include maps, profiles, and other data and descriptions as may be necessary to set forth the location and character of the works.

History: C. 1953, 73-9-13.4, enacted by L. 1988, ch. 178, § 5.

became effective on April 25, 1988, pursuant to Utah Const., Art. VI, Sec. 25.

Effective Dates. — Laws 1988, Chapter 178

73-9-13.5. Utilization or distribution of electric power — Subject to terms and conditions of contracts — Use of revenues.

(1) Electric power from any power plant owned by a district may be utilized by a district or may be distributed and sold to an electric utility or a municipality having, at the time of the commencement of the acquisition or construction of the electric power plant by the district, an existing system for distributing electric power. The district may not act as a retail distributor or seller of electric power.

(2) Any distribution or sale of electric power by a district may be for the period and upon the terms and conditions provided in contracts authorized by the board and entered into by the district and any electric utility or municipality described in Subsection (1).

(3) Any revenues received by a district from the sale of electric power may be used and pledged for the payment of the principal, interest, or any premium of bonds or notes of the district issued to pay all or part of the cost of acquiring or constructing the electric power plant from which the electric power is generated, or for any other lawful purpose of the district.

History: C. 1953, 73-9-13.5, enacted by L. 1988, ch. 178, § 6.

became effective on April 25, 1988, pursuant to Utah Const., Art. VI, Sec. 25.

Effective Dates. — Laws 1988, Chapter 178

73-9-13.6. Franchise not required.

No franchise shall be necessary for the acquisition, ownership, operation, or maintenance of any property by a district.

History: C. 1953, 73-9-13.6, enacted by L. 1988, ch. 178, § 7.

became effective on April 25, 1988, pursuant to Utah Const., Art. VI, Sec. 25.

Effective Dates. — Laws 1988, Chapter 178

73-9-14. Subdistricts — Organization — Authority — Bonds — Board of directors — Powers — Validation of proceedings — Separability clause.

(1) Subdistricts may be organized upon the petition of owners of real property, within or partly within and partly without the district, which petition shall be in substantially the same form and shall fulfill the same requirements concerning the subdistricts as the petition outlined in Section 73-9-4 is required to fulfill concerning the organization of the main district. The petition shall also contain a statement of the initial quantity of water which the subdistrict proposes to acquire from the district for perpetual use, and the court shall, prior to the entry of its decree organizing a subdistrict, require that the petitioners attach to the petition written evidence of the consent of the board of directors of the district to furnish each subdistrict the perpetual use of water for the purpose specified. Petitions for the organization of subdistricts shall be filed with the clerk of the court and shall be accompanied by a bond as provided for in Section 73-9-5. The procedure for the organization of subdistricts shall be the same as for the organization of districts, except that the provisions of Section 73-9-4 respecting the minimum taxable value of land and improvements within districts does not apply to subdistricts. A subdistrict shall be a separate entity within the district, may contract with the district for the furnishing of water and for other purposes, and in addition to any other authority granted under this chapter, may issue its bonds pursuant to and in conformity with the provisions of this chapter for the following purposes: (a) acquiring or constructing all or part of an irrigation water system to be operated by the subdistrict for the purpose of providing irrigation water for agricultural and residential land within the boundaries of the subdistrict, including as a part of the subdistrict, the purchase or acquisition of stock in canal companies, water companies, and water users' associations and the acquisition or purchase of water rights and sources of water supply; and (b) constructing water pipelines and storage works, purchase of water and water rights, operation of waterworks systems for the purpose of providing municipal water within the boundaries of the subdistrict and for this purpose the subdistrict board has the same powers, rights, and privileges granted to a district board referred to in Sections 73-9-13, 73-9-14.5, 73-9-15, and 73-9-17, to carry out its separate purposes under the provisions of this chapter. The subdistrict board may contract with the district for the furnishing of water for the purposes as stated in the initial petition as well as other purposes. Within 30 days after entering the decree incorporating a subdistrict, the county governing body of the county shall appoint a board of directors of the subdistrict not exceeding seven persons who are owners of real property in the subdistrict and who are not directors of the district. Vacancies in subdistricts shall be filled by the county governing body of the county. The board of directors of a subdistrict has all of the powers, rights, and privileges granted to a district board, including specifically, but not limited to, the right of the subdistrict board to levy and collect taxes and assessments referred to in Sections 73-9-16 through 73-9-23, to carry out its separate purposes, including the payment of principal and interest on bonds payable in whole or in part from the proceeds of assessments and taxes levied under this chapter issued by the subdistrict under this chapter. These taxes and assessments may be levied and collected by a subdistrict, notwithstanding the fact that taxes and assessments are being levied

and collected by the district in which the subdistrict may lie, to carry out the district purposes; but the taxes levied and collected pursuant to Section 73-9-16 may not exceed .0002 per dollar of taxable value of taxable property within the subdistrict to pay the expenses of its organization and administration and may not exceed .0002 per dollar of taxable value of taxable property for all purposes.

(2) Each subdistrict created under this section may exercise all powers granted to subdistricts under this chapter, it being expressly found and determined that all taxable property lying in each subdistrict will be benefited by the acquisition or construction of the improvements acquired or constructed by the district to an amount not less than the aggregate of the taxes and assessments levied against the property to pay for the cost of acquisition or construction. Wherever proceedings are adopted under authority of this chapter purporting to create any subdistrict, all proceedings in connection with the creation of each subdistrict are validated, ratified, and confirmed, notwithstanding any failure to comply with any one or more pertinent statutory provisions; and each subdistrict is declared to be a validly created and existing subdistrict under authority of law.

(3) If any provision of this chapter, or the application of any provision to any person or circumstance, is held invalid, the remainder of this chapter is not affected.

History: L. 1941, ch. 99, § 14; C. 1943, 100-11-14; L. 1949, ch. 95, § 1; 1951, ch. 120, § 1; 1957, ch. 160, § 1; 1967, ch. 193, § 1; 1969, ch. 230, § 1; 1981, ch. 285, § 1; 1983, ch. 350, § 2; 1985, ch. 165, § 86; 1988, ch. 3, § 260.

Amendment Notes. — The 1985 amendment substituted ".0002" for "one mill on the dollar" in two places in the last sentence of Subsection (1).

The 1988 amendment, effective February 9, 1988, substituted "taxable value" for "assessed value" in the fourth sentence of Subsection (1); substituted "county governing body" for "board of county commissioners" in the seventh and eighth sentences of Subsection (1); substituted "per dollar of taxable value of taxable property" for "of assessed valuation of the property"

in two places near the end of the final sentence of Subsection (1); and made minor stylistic changes throughout.

Compiler's Notes. — The provision of this section, as constituted prior to its amendment in 1983, empowering the district courts to appoint members of the board of directors of water conservancy subdistricts was held to violate the separation of powers clause of Article V, Section 1 of the state constitution in *Timpanogos Planning & Water Management Agency v. Central Utah Water Conservancy Dist.* (1984) 690 P 2d 562. The decision was given prospective application only.

Retrospective Operation. — Laws 1988, ch. 3, § 269 provides that the act "has retrospective operation to January 1, 1988."

NOTES TO DECISIONS

Power of subdistrict to levy tax.

The 1951 amendment which gave subdistrict an independent entity status within the district and gave such subdistrict boards the same powers and duties as the district boards did not

give to such subdistrict boards the power to levy and collect the ad valorem taxes on property. *Bountiful Water Subconservancy Dist. v. Board of County Comm'rs*, 5 Utah 2d 142, 298 P.2d 524 (1956).

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(2).

Key Numbers. — Waters and Water Courses ⇨ 183½.

73-9-14.5. Inclusion of existing district in another district — Powers and authority of districts — Contracts between districts — Public corporations within districts.

If the area of an existing water conservancy district is included in another water conservancy district, each district shall be and remain a separate entity and each district shall have all of the powers and authority of a water conservancy district including, but not limited to, the power to levy and collect taxes and assessments referred to in Sections 73-9-16 to 73-9-23 both inclusive, to carry out the separate purposes of each district.

Where an existing district is included in whole or in part in a larger district, the existing district may contract with such larger district for the right to use water to be made available by such larger district. Such contract shall contain appropriate provisions for levying and collecting special assessments to meet all charges for the use of such water.

Water conservancy districts, improvement districts, metropolitan water districts, and other similar public corporations now existing or hereafter created, lying in whole or in part within the boundaries of a water conservancy district shall be regarded as municipalities for the purposes of Sections 73-9-13, 73-9-15, 73-9-17, and all other provisions of this chapter which have to do with the allotment of water to municipalities and the imposition of Class B assessments.

The governing body of such public corporation shall by resolution authorize and direct its officers to petition the board for an allotment of water upon terms prescribed by the board.

History: C. 1953, 73-9-14.5, enacted by L. 1961, ch. 168, § 4.

boundaries of water conservancy districts, notice to State Tax Commission, § 11-12-1.

Cross-References. — Modification of

73-9-15. District board may levy and collect taxes and special assessments — Classification of methods.

In addition to the other means of providing revenue for such districts as herein provided, the board shall have power and authority to levy and collect taxes and special assessments for maintaining and operating such works and paying the obligations and indebtedness of the district by any one or more of the methods or combinations thereof, classified as follows:

Class A. To levy and collect taxes upon all property within the district as hereinafter provided.

Class B. To levy and collect assessments for special benefits accruing to property within municipalities for which use of water is allotted as hereinafter provided.

Class C. To levy and collect assessments for special benefits accruing to lands within irrigation districts for which use of water is allotted as hereinafter provided.

Class D. To levy and collect assessments for special benefits accruing to lands for which use of water is allotted as hereinafter provided.

History: L. 1941, ch. 99, § 15; C. 1943, 100-11-15.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.
Classification.

Constitutionality.

This section does not violate Art. VI, § 26, of the Constitution of Utah, because a water conservancy district is not organized under special law, and being a quasi-municipal corporation, formed for public purposes, it is within the discretion of the legislature to grant it any

powers, not expressly inhibited by the Constitution, to further such purposes, including the power of taxation. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

Classification.

Class A of this section refers to a general tax. Classes B, C and D refer to taxes to be imposed for special benefits. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(7).

Key Numbers. — Waters and Water Courses ⇌ 183½.

73-9-16. Levy and collection of taxes under class A — Rate of levy.

(1) To levy and collect taxes under class A as provided in this chapter, the board shall annually:

(a) determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district; and

(b) fix a rate of levy which when levied upon every dollar of taxable value of property within the district, and with other revenues, will raise the amount required by the district to supply funds for:

(i) expenses of organization;

(ii) surveys and plans;

(iii) the cost of construction; and

(iv) operating and maintaining the works of the district.

(2) The rate of levy shall not exceed .0001 per dollar of taxable value of taxable property within the district, prior to the commencement of construction of the works, and thereafter shall not exceed .0002 per dollar of taxable value of taxable property within the district except:

(a) in districts to be served by water apportioned by the Colorado River Compact to the Lower Basin, the levy after commencement of construction of the works may be increased to a maximum of .001 per dollar of taxable value of taxable property within the district;

(b) in districts to be served under a contract, a water appropriation, a water allotment, or otherwise by water apportioned by the Colorado River Compact to the Upper Basin, the levy after commencement of construction of the works may be increased to a maximum of .0004 per dollar of taxable value of taxable property within the district; and

(c) in the event of accruing defaults or deficiencies an additional levy may be made in any district as provided in Section 73-9-20.

(3) The board shall, before June 22 of each year, certify to the board of county commissioners of each county within the district or having a portion of

its territory within the district, the rate fixed with directions that at the time and in the manner required by law for levying of taxes for county purposes, the board of county commissioners shall levy the tax upon the taxable value of all property within the district, in addition to any other taxes as may be levied by the board of county commissioners at the rate so fixed and determined.

History: L. 1941, ch. 99, § 16; C. 1943, 100-11-16; L. 1949, ch. 95, § 1; 1951, ch. 121, § 1; 1974, ch. 34, § 1; 1982, ch. 71, § 68; 1983, ch. 352, § 1; 1985, ch. 165, § 87; 1988, ch. 3, § 261; 1988, ch. 63, § 3.

Amendment Notes. — The 1985 amendment substituted ".0001 of assessed valuation of the property within the district" for "one-half mill on the dollar," ".0002" for "one mill on the dollar," ".001" for "five mills on the dollar," and ".0004" for "two mills on the dollar" in the first sentence.

The 1988 amendment by ch. 3, effective February 9, 1988, substituted "taxable value" for "assessed valuation" in the first and final sen-

tences and substituted "per dollar of taxable value of taxable" for "of assessed valuation of the" where the words appear.

The 1988 amendment by ch. 63, effective April 25, 1988, subdivided the previously undesignated paragraph; substituted "June 22" for "the fifteenth day of June" in Subsection (3); and made minor stylistic changes throughout.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Retrospective Operation. — Laws 1988, ch. 3, § 269 provides that the act "has retrospective operation to January 1, 1988."

73-9-17. Board may sell or lease water to municipalities upon petition — Fix rates — Levy and collection of special assessments under class B.

To levy and collect special assessments under class B as herein provided, the board shall make an allotment of water to each petitioning municipality in the district in the manner as hereinafter provided, in such quantity as will in the judgment of the board, when added to the then present supply of water of such municipality, make an adequate supply for such municipality, and shall fix and determine the rate or rates per acre-foot, or other units of measurement, the service, turnout, construction, distribution system charges, or other charges, if any, and terms at and upon which water shall be sold, leased or otherwise disposed of, for use by such municipalities; provided, however, that such rates and charges shall be equitable although not necessarily equal or uniform for like classes of services throughout the district. In the event of [that] any city, city and county, or town shall desire to purchase, lease or otherwise obtain the beneficial use of waters of the district for domestic or irrigation purposes, the legislative body of such municipality shall by ordinance authorize and direct its mayor and clerk to petition the board for an allotment of water, upon terms prescribed by the board, which petition shall contain inter alia, the following:

- (1) Name of municipality.
- (2) Quantity of water to be purchased or otherwise acquired.
- (3) Price per acre-foot or other unit of measurement, and the amount of any service, turnout, connection, distribution system charge or other charges to be paid.
- (4) Whether payments are to be made in cash or annual installments.
- (5) Agreement by the municipality to make payments for the beneficial use of such water together with annual maintenance and operating charges and to be bound by the provisions of this act and the rules and regulations of the board.

Neither the quantity of water to be acquired, nor the rates or charges as specified in such petition, need be the same in each year to be covered by the petition. Any such petition and order may provide for water for such municipality for such term of years and [as] may be fixed therein and the procedure herein provided for the determination of the amount of taxes necessary to be levied each year shall be operative in each year over such term of years without the filing of a new petition or the entering of a new order.

The secretary of the board shall cause notice of the filing of such petition to be given and published once each week for two successive weeks, in a newspaper published in the county in which said municipality is situated, which notice shall state the filing of such petition and giving notice to all persons interested to appear at the office of the board, at a time named in said notice, and show cause, in writing, if any they have, why the petition should not be granted, and such persons may advance reasons and arguments to show that the municipality and its inhabitants will not be benefited by the proposed petition and order to the amount of such taxes. The board at the time and place mentioned in said notice or at such time or times at which the hearing of said petition may adjourn, shall proceed to hear the petition and objections thereto, presented, in writing, by any person showing cause as aforesaid why said petition should not be granted. The failure of any person interested to show cause in writing, as aforesaid, shall be deemed and taken as an assent on his part to the granting of said petition. The board may at its discretion accept or reject the said petition, but if it deems it for the best interest of the district that said petition be granted, and if it finds that said municipality and its inhabitants will be benefited thereby to an amount not less than the taxes which will be imposed, it shall enter an order granting the said petition and from and after such order the said municipality shall be deemed to have purchased, leased or otherwise acquired the beneficial use of water as set forth in said order. If said petition is granted, the board shall, in each year, determine the amount of money necessary to be raised by taxation from property within such municipality to pay the annual installments and a fair proportionate amount of estimated operating and maintenance charges for the next succeeding year, as provided in the order granting said petition, and prepare a statement showing the tax rate to be applied to all property in such municipality, which rate shall be the rate fixed by resolution of the board modified to the extent necessary to produce from each such municipality only the amount of money apportioned thereto in said resolution, less any amount paid or undertaken to be paid by such municipality in cash or as credited thereto by payments from the other funds of such municipality. In fixing the rate of taxes to be levied in each year the board shall give due consideration to probable delinquencies in tax payments and shall fix such rate as will assure the prompt collection of taxes sufficient to make up the amount needed for such year despite the fact that a part of the taxes so levied may be delinquent when due. Upon receipt by the board of county commissioners of each county, wherein such municipality is located, of a certified copy of such resolution showing the tax rate to be applied to all property in each municipality and showing the municipalities and the property which is exempt therefrom, if any, it shall be the duty of the county officers to levy and collect such tax in addition to such other tax as may be levied by such board of county commissioners at the rate so fixed and determined.

The hearing on the petition for which provision is hereinabove required and the finding as to the benefits which will be made by the board shall take into consideration a tax to be levied on all real and personal property in the petitioning municipality and the class B assessments which will be levied pursuant to the provisions of this section shall be in the nature of ad valorem taxes to be levied on all real and personal property in the municipality with the exception of property exempt from taxation under the provisions of the Constitution and statutes of Utah or Section 73-9-24 hereof.

History: L. 1941, ch. 99, § 17; C. 1943, 100-11-17; L. 1953, ch. 32, § 1; 1957, ch. 160, § 1.

Cross-References. — Water supply in cities and towns, § 10-7-4.

NOTES TO DECISIONS

Construction and application.

This section provides for voluntary application by municipalities for the special benefits they wish to obtain. This and the other sections of this act contain provisions for notice to all persons interested and for hearing before the board and fully provide for safeguards of the

parties' rights. There is nothing in the act that would preclude a person aggrieved by an action of a board from resorting to the courts to have his rights protected. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters §§ 243(5), 243(7).

Key Numbers. — Waters and Water Courses ☞ 183½.

73-9-18. Board may sell or lease water to irrigation districts — Levy and collection of special assessments under class C.

To levy and collect special assessments upon lands under class C as herein provided, the board shall make an allotment of water to each of the petitioning irrigation districts within the district in the manner as hereinafter provided in such quantity as will in the judgment of the board, when added to the present supply of water of such irrigation district, make an adequate supply of water for such irrigation district, and shall fix and determine the rates per acre-foot or other unit of measurement, the service, turnout, connection, distribution system charges or other charges and terms at and upon which water shall be sold, leased or otherwise disposed of to such irrigation district; provided, however, that such rates and charges shall be equitable although not necessarily equal or uniform for like classes of services throughout the district. In the event any irrigation district shall desire to purchase, lease or otherwise obtain the beneficial use of waters of the district, the board of such irrigation district shall by resolution authorize and direct its president and secretary to petition the board for an allotment of water, upon terms prescribed by the board, which petition shall contain, inter alia, the following:

- (1) Name of irrigation district.
- (2) Quantity of water to be purchased or otherwise acquired.
- (3) Price per acre-foot or other unit of measurement and the amount of any service, connection, distribution system charge or other charges to be paid.

(4) Whether payments are to be made in cash or annual installments.

(5) Agreement by such irrigation district to make payments for the beneficial use of such water, together with annual maintenance and operating charges, and to be bound by the provision of this act and the rules and regulations of the board.

The secretary of the board shall cause notice of the filing of such petition to be given and published, which notice shall state the filing of such petition and giving notice to all persons interested to appear at the office of the board at a time named in said notice and show cause in writing, if any they have, why the petition should not be granted. The board at the time and place mentioned in said notice, or at such time or times at which the hearing of said petition may be adjourned, shall proceed to hear the petition and objections thereto, presented, in writing, by any person showing cause as aforesaid why said petition should not be granted. The failure of any person interested to show cause in writing, as aforesaid, shall be deemed and taken as an assent on his part to the granting of said petition. The board may, at its discretion, accept or reject the said petition, but if it deems it for the best interest of the district [that] the said petition shall be granted, shall enter an order to that effect granting the said petition, and from and after such order, the irrigation district, and/or persons therein shall be deemed to have purchased, leased, or otherwise acquired the beneficial use of water as set forth in said order. If said petition is granted, the board shall, in each year, determine the amount of money necessary to be raised by special assessment on lands within such irrigation district and shall determine whether such special assessment shall be levied by the district or by the irrigation district. If the board determines that such assessments shall be levied by the district, it shall certify to the county auditor of the county in which the lands of such irrigation district are located the amount of the assessment, plus a fair proportionate amount of the estimated operating and maintenance charges for the next succeeding year on each tract of land on or before the 1st day of July of each year, and such county auditor shall extend the amount of such special assessment, plus said operating and maintenance charges on the tax roll as a special assessment against the lands on which said special assessment is made. If the board determines that such assessments shall be levied by the irrigation district, the district shall make a contract with the irrigation district which shall provide among other things for the annual payment to the district of an amount to be obtained from the levy by the irrigation district of annual assessments in accordance with the irrigation district law. If subdistrict or subdistricts are organized as herein provided, assessments of special benefits shall be made, spread on the tax rolls and collected in the same manner as herein provided in the case of irrigation districts.

History: L. 1941, ch. 99, § 18; C. 1943, 100-11-18; L. 1953, ch. 132, § 1; 1957, ch. 160, § 1; 1959, ch. 138, § 1.

Cross-References. — Irrigation districts, § 73-7-1 et seq.

NOTES TO DECISIONS

Protection of rights.

This section provides for voluntary application by irrigation districts for the special benefits they wish to obtain. This and the other sections of this act contain provisions for notice to all persons interested and for hearing before

the board and fully provide safeguards of the parties' rights. Nothing in the act would preclude a person aggrieved by board action from resorting to the courts to have his rights protected. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P. 2d 503 (1944).

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters §§ 243(5), 243(7).

Key Numbers. — Waters and Water Courses ☞ 183^{1/2}.

73-9-19. Board may sell or lease water to persons and private corporations on petition — Levy and collection of taxes under class D.

To levy and collect special assessments upon lands under class D as herein provided, the board shall make an allotment of water to petitioning owners of lands in the district, upon which water can be beneficially used in the manner as herein provided, in such amount as will, in the judgment of the board, together with the present supply of water for irrigation purposes on such lands, make an adequate water supply for irrigation of such lands, and shall fix and determine the rate or rates per acre-foot or other unit of measurement, the service, turnout, connection, distribution system charges, or other charges, if any, and the terms at and upon which water shall be held, leased or otherwise disposed of, for use on said lands. In the event that any person or private corporation shall elect to purchase, lease or otherwise obtain the beneficial use of waters of the district for irrigation of lands, such person or corporation shall petition the board for an allotment of water upon terms prescribed by the board, which petition shall contain inter alia, the following:

- (1) Name of applicant.
- (2) Quantity of water to be purchased or otherwise acquired.
- (3) Description of lands upon which the water will be used and attached.
- (4) Price per acre-foot or other unit of measurement and the amount of any service, turnout, connection, distribution system charge, or other charges to be paid.
- (5) Whether payments will be made in cash or annual installments.
- (6) Agreement that the annual installments and the charges for maintenance and operating shall become a tax lien upon the lands for which such water is petitioned and allotted and to be bound by the provisions of this act and the rules and regulations of the board.

The board may, in its discretion, accept or reject the said petition, but if it deems it for the best interest of the district that said petition be granted, shall enter an order granting the said petition, and from and after such order, the said petitioner shall be deemed to have agreed to the purchase, lease or other means of acquiring the beneficial use of water under the terms set forth in said petition and order. Such order shall provide for payment on the basis of rate per acre-foot or other unit of measurement of water allotted to said lands

within the district, providing that the board may divide the district into units and fix a different rate per acre-foot or other unit of measurement of water in the respective units and different amounts of service, turnout, connection, distribution system charges or other charges, and provided, further, that such rates and charges shall be equitable although not necessarily equal or uniform for like classes of services throughout the district.

The secretary of the board shall cause notice of the filing of such petition to be given and published, which notice shall state the filing of such petition and giving notice to all persons interested to appear at the office of the board at a time named in said notice and show cause in writing, if any they have, why the petition should not be granted. The board at the time and place mentioned in said notice, or at such time or times at which the hearing on said petition may be adjourned, shall proceed or [to] hear the petition and objections thereto, presented, in writing, by any person showing cause as aforesaid, why said petition should not be granted. The failure of any person interested to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to the granting of said petition. The board may, at its discretion, accept or reject the said petition, but if it deems it for the best interest of the district that said petition shall be granted, shall enter an order to that effect granting such petition, and from and after such order the petitioner or persons interested therein, shall be deemed to have purchased, leased, or otherwise acquired the beneficial use of water as set forth in said order. If such petition is granted the board shall cause a certified copy of the order granting said petition to be recorded in the county in which said lands are located, and thereafter the annual installments and annual operating and maintenance charges shall be a perpetual tax lien upon said lands. The board shall on or before the 1st day of July of each year, certify to the county auditor of the county within the district in which such lands are located the amount of the annual installments, plus a fair proportionate amount of the estimated operating and maintenance charges apportioned shall extend the amount so certified on the tax roll as a flat special assessment against the lands for which such water is petitioned and allotted.

History: L. 1941, ch. 99, § 19; C. 1943, 100-19; L. 1957, ch. 160, § 1; 1959, ch. 138, § 1.

NOTES TO DECISIONS

Protection of rights.

This section provides for voluntary application by individuals for the special benefits they wish to obtain. This and the other sections of this act contain provisions for notice to all persons interested and for hearing before the board and fully protects all the parties' rights.

Should a board act in a manner that would be unconstitutional, there is nothing in the act itself that would preclude a person aggrieved from resorting to the courts to have his rights protected. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P. 2d 503 (1944).

73-9-20. Additional taxes and assessments to pay deficiencies.

The board in making the annual assessments and levies as provided in this chapter shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, the maturing of the principal of and interest on all bonds payable in whole or in part from the proceeds of assessments and taxes levied under this chapter, deficiencies and defaults of prior years, and shall make ample provision for payment. If the proceeds of the levies and assessments made under this chapter, together with other revenues of the district, are not sufficient to punctually pay the annual installments on these contracts and bonds and any interest, and to pay defaults and deficiencies, then the board shall make additional levies of taxes and assessments necessary for those purposes. Notwithstanding any limitations by contract, order, tax lien, or otherwise, the taxes and assessments shall be made and continue until these contracts and bonds of the district are fully paid; but the amount of these additional levies of taxes under class A may not in any one year exceed an amount that would be raised by a levy of .0001 per dollar of taxable value of taxable property as fixed for general tax purposes.

History: L. 1941, ch. 99, § 20; C. 1943, 100-11-20; L. 1953, ch. 132, § 1; 1981, ch. 285, § 2; 1985, ch. 165, § 88; 1988, ch. 3, § 262.

Amendment Notes. — The 1985 amendment, effective January 1, 1986, substituted ".0001 of the assessed value" for "one-half mill against the assessed value" in the last sentence.

The 1988 amendment, effective February 9, 1988, substituted "provided in this chapter" for

"herein provided" in the first sentence; substituted "per dollar of taxable value of taxable property" for "of the assessed value of such property" in the final sentence; and made minor stylistic changes.

Retrospective Operation. — Laws 1988, ch. 3, § 269 provides that the act "has retrospective operation to January 1, 1988."

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(7).

Key Numbers. — Waters and Water Courses ◊ 183½.

73-9-21. Objections to assessments — Hearings — Procedure — Appeal.

(1) Prior to August 8 of each year in which assessments are made, the board shall designate a time and place where it will meet within the district for the purpose of hearing objections to assessments. Prior notice of the hearing shall be given by publication in two issues, a week apart, in a newspaper of general circulation published in each county in which lands of the district are located. If no newspaper is published in a county, the notice shall be published in an adjoining county. The notice shall contain the following information:

- (a) a general description of the property so assessed;
- (b) the amount of the assessment fixed by the board; and
- (c) the time and place fixed by the board for hearing objections to the assessments.

(2) Any owner of property may contact the secretary of the board to determine:

- (a) whether his real estate is covered by the assessment; and

(b) the amount of the assessment.

(3) If any person thinks that his property has been assessed too high, or has been erroneously or illegally assessed, he may at any time before the date of the hearing, file written objections to the assessments, stating the grounds of his objections. This statement shall be verified by the affidavit of the person or his agent. In the hearing, the board shall hear the evidence and arguments concerning the correctness or legality of the assessment and may modify the assessment.

(4) Any owner of property desiring to appeal from the findings of the board as to assessment shall, within 30 days from the finding of the board, file with the clerk of the court a written notice requesting a trial by the court. The appellant at the same time shall file a bond with good and sufficient security to be approved by the clerk of the court in a sum not exceeding \$200. If the finding of the court is less favorable to the appellant than the finding of the board, the appellant will pay the cost of the appeal. The appellant shall state specifically the part of the order from which the appeal is taken. If more than one appeal is taken, the court may upon showing that the appeal may be consolidated without injury to the interests of any one, consolidate and try the appeals together.

(5) The court shall not disturb the findings of the board unless the findings of the board are manifestly disproportionate to the assessments imposed upon other property in the district created under this chapter. The court shall act as quickly as possible after the appeal is filed. If no appeal is filed within the time prescribed in this section, then the assessment shall be final and conclusive evidence that the assessments have been made in proportion to the benefits conferred upon the property in the district. The assessment shall constitute a perpetual lien upon the assessed property until paid.

History: L. 1941, ch. 99, § 21; C. 1943, 100-11-21; L. 1988, ch. 63, § 4.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, added subsection designations to the previously undesignated provisions; substituted "August 8" for "the 1st day of July" in the first sentence in Subsection (1); rewrote the last sentence in the introductory paragraph in Subsection (1), which had read: "Said notice shall notify the owners of property in the district that in the secretary's office may be found and examined" and deleted a sentence at the end of Subsection (1)(c) that read: "It shall not be necessary for said notice to contain separate descriptions of the lots or tracts of real estate, but it shall be

sufficient if the notice shall contain such descriptions as will inform the owner whether or not his real estate is covered by such descriptions, and to inform the owner where can be found of record the amount of assessments"; added Subsection (2); substituted "requesting" for "making demand for" in Subsection (4); in Subsection (5), rewrote the second sentence, which had read: "The trial shall be to the court and the matter shall take precedence before the court and shall be taken up as promptly as may be after the appeal is filed," and deleted "or after the findings of the court in case an appeal is taken from the findings of the board" after "in this section"; and made minor stylistic changes throughout.

NOTES TO DECISIONS

Protection of rights.

This section provides for hearing of objections to assessments to be levied and for notice by publication to all persons interested. It fully provides for all the safeguards of parties'

rights, by appeal to the courts from any action of the board. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P. 2d 503 (1944).

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(7).

Key Numbers. — Waters and Water
Courses ⇌ 183½.

73-9-22. Officials charged with duty to collect taxes — Taxes levied create equal lien.

It shall be the duty of the officer or body having authority to levy taxes within each county, city and county, or town, to levy the taxes and special assessments as provided in this act, and it shall be the duty of all county, or city and county officials, charged with the duty of collecting taxes, to collect such taxes and special assessments in the time, form and manner and with like interest and penalties as county or city and county taxes are collected and when collected to pay the same to the district ordering its levy and collection, and the payment of such collections shall be made through the secretary of the district and paid into the depository thereof to the credit of the district. All taxes and assessments made under this act, together with all interest thereon and penalties for default in payment thereof, and all costs in collecting the same, shall, until paid, constitute a perpetual lien on a parity with the tax lien of general, state, county, city, town or school taxes and no sale of such property to enforce any general, state, county, city, town or school tax or other liens shall extinguish the perpetual lien of such taxes and assessments.

History: L. 1941, ch. 99, § 22; C. 1943,
100-11-22.

73-9-23. Tax sales.

If the taxes and assessments levied are not paid as herein provided, then the real property shall be sold at the regular tax sale for the payment of said taxes and assessments, interest and penalties, in the manner provided by the statutes of the state of Utah for selling property for payment of general taxes. If there are no bids at said tax sale for the property so offered under class A and class B, said property shall be struck off to the county, and the county shall account to the district in the same manner as provided by law for accounting for school, town and city taxes. And if there are no bids for the property so offered under class C and class D, said property shall be struck off to the district and the tax certificate shall be issued in the name of the district and the board shall have the same power with reference to sale of said tax certificate, as now vested in county commissioners and county treasurers when property is struck off to the counties.

History: L. 1941, ch. 99, § 23; C. 1943,
100-11-23.

73-9-24. Property exempt from assessments.

All property of whatever kind and nature owned by the state and by towns, cities, school districts, drainage districts, metropolitan water districts, irrigation districts, park districts, water districts, or any other governmental agency or agencies within the said district shall be exempt from assessment and levy by the board as provided by this act for the purposes herein contained.

History: L. 1941, ch. 99, § 24; C. 1943, 100-11-24.

73-9-25. Board may dispose of water under term contracts.

The board may sell, lease or otherwise dispose of the use of water by term contracts or by contracts for the perpetual use of such water to persons, public corporations, mutual ditch companies, water users' associations and other private corporations as shall be provided by contracts, in writing, authorized and entered into by the board; and, except where the contract requires the purchasing party to pay for certain specified annual minimums, where the water is available for it without regard to actual taking or use, the board shall require that security be given to secure the payment to be made under such contract or contracts. In contracts with public corporations the security requirement may be met by including appropriate provisions for the levying by such corporations of special assessments to meet annual payments to the district.

History: L. 1941, ch. 99, § 25; C. 1943, 100-11-25; L. 1953, ch. 132, § 1; 1977, ch. 282, § 4.

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(5).

Key Numbers. — Waters and Water Courses ⊕ 183½.

73-9-26. Liens to secure payment of annual installments.

To meet the annual installments as provided in contracts for the use of water:

(a) A water users' association may bind itself to levy an annual assessment on the use of water and to secure same by liens on land and water rights or in such manner as may be provided by law;

(b) A mutual ditch or irrigation company may bind itself by mortgage upon its irrigation works and system and levy annual assessments upon its stockholders; and

(c) Any person or corporation landowner may create a mortgage lien upon lands or give other security satisfactory to the board; and all such contracts shall provide for forfeiture of the use of water for nonpayment of assessments or installments in the same manner and procedure as provided by statute for forfeiture of stock in a mutual ditch company.

History: L. 1941, ch. 99, § 26; C. 1943, 100-11-26.

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(6).

Key Numbers. — Waters and Water Courses ⇌ 183½.

73-9-27. Creation of sinking fund.

Whenever a contract of indebtedness has been created by the district or bonds issued by the district payable in whole or in part from the proceeds of assessments and taxes levied under this chapter, it shall be lawful for the board to make the annual levy of taxes and special assessments under this chapter in such amount as will create a surplus of funds to meet the annual installments of indebtedness on the contract or the payment of the principal of and interest on the bonds, and the necessary maintenance and operating charges; and the board shall cause such surplus funds to be placed in a sinking fund which may be used for the payments of contingencies, defaults, and delinquencies and to pay the future annual installments of indebtedness on the contract or principal of and interest on the bonds.

History: L. 1941, ch. 99, § 27; C. 1943, 100-11-27; L. 1981, ch. 285, § 3.

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(7).

Key Numbers. — Waters and Water Courses ⇌ 183½.

73-9-28. Powers of board in distribution of water.

The board shall have the following powers concerning the management, control, delivery, use and distribution of water by the district, to wit:

(1) To make and enforce all reasonable rules and regulations for the management, control, delivery, use and distribution of water.

(2) To withhold the delivery of water upon which there are any defaults or delinquencies of payment.

(3) To provide for and declare forfeitures of rights to the use of water upon default or failure to comply with any order, contract or agreement for the purchase, lease or use of water and to resell, lease or otherwise dispose of water upon which forfeiture has been declared.

(4) To allocate and reallocate the use of water to lands within the district.

(5) To provide for and grant the right, upon terms, to transfer water from lands to which water has been allocated to other lands within the district and to discharge liens from lands to which same was theretofore attached and to create liens, as provided in this act, upon lands to which the use of such water is transferred.

History: L. 1941, ch. 99, § 28; C. 1943, 100-11-28.

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(5).

Key Numbers. — Waters and Water Courses ⇌ 183½.

73-9-28.1. Rulemaking and enforcement power of board.

The board shall have the power to make and enforce all reasonable rules for the management, control, delivery, use, and distribution of water.

History: C. 1953, 73-9-28.1, enacted by L. 1988, ch. 63, § 5. became effective on April 25, 1988, pursuant to Utah Const., Art. VI, Sec. 25.

Effective Dates. — Laws 1988, Chapter 63

73-9-29. Change of boundaries — Procedure — Petitions for inclusion within district — Requirements — Notice — Hearing — Petition protesting inclusion — Hearing — Appeal — Annexation — Procedure — Notice — Hearing — Objections — Order of inclusion — Findings and decrees — Appeal.

(1) The boundaries of any district organized under this chapter may be changed as provided by this section, but the change of boundaries of the district shall not impair or affect:

- (a) its organization;
- (b) its rights in or to property;
- (c) any of its other rights or privileges; or
- (d) any contract, obligation, lien, or charge for or upon which it might be liable or chargeable had the change of boundaries not been made.

(2) (a) The owners of lands which are either contiguous or noncontiguous to the district and to each other may file a written petition with the board requesting that their lands be included in the district. The petition shall contain:

- (i) a description of the tracts or body of land sought to be included; and
- (ii) the signatures, acknowledged in the same form as conveyances of real estate, of the owners of the lands.

A petition filed in this form will be considered to give assent of the petitioners to the inclusion within the district of the lands described in the petition.

(b) The board shall, within 90 days after the filing of the petition, set and convene a hearing to consider the petition and all objections.

(c) The secretary of the board shall cause notice of the filing of the petition to be given and published in the county in which the lands are situated. This notice shall state:

- (i) the names of petitioners;
- (ii) a description of lands mentioned;
- (iii) the request of the petitioners; and

(iv) that all persons interested must appear at the office of the board at the time named in the notice and state in writing why the petition should not be granted.

(d) The board shall, at the appropriate time, proceed to hear the petition and review the written objections to the petition. The failure of any person to show cause, in writing, shall be considered to be his assent to the inclusion of these lands within the district.

(e) If the petition is granted, the board shall make an order to that effect and file the petition with the clerk of the court and upon order of the court the lands shall be included in the district.

(3) (a) In addition to the method provided in Subsection (2), additional areas may be included in a district by petition as described in this subsection. A written petition may be filed to include:

- (i) irrigated lands;
- (ii) nonirrigated lands;
- (iii) land in towns and cities;
- (iv) other lands; or

(v) any combination of lands under this subsection. These lands may be contiguous or noncontiguous to the district and to each other.

(b) The petition must:

(i) be filed in the district court of the county in which the petition for organization of the original district was filed;

(ii) include the signatures, acknowledged in the same form as conveyances of real estate, of not fewer than 20% or 500, whichever is the lesser, of the owners of irrigated lands in the area, but outside the corporate limits of a city or town;

(iii) include the signatures, acknowledged in the same form as conveyances of real estate, of not fewer than 5% or 100, whichever is the lesser, of the owners of nonirrigated lands and lands within the incorporated limits of a city or town, which are within the area specified in the petition;

(iv) list a description of each tract of land owned by the signer opposite the name of the signer, with an indication that each tract, together with its improvements, has a taxable value of not less than \$300; and

(v) set forth:

(A) a general description of the territory in the area sought to be included in the district;

(B) the name of the district in which it is sought to be included;

(C) the terms and conditions upon which inclusion is sought;

(D) a statement that the property sought to be included will be benefited by the accomplishment of the purposes for which the original district was formed; and

(E) a request for inclusion of the area in the district.

(c) No petition with the requisite signatures shall be declared null and void because of alleged defects, but the court may permit the petition to be amended to conform to the facts by correcting any errors. However, similar petitions or duplicate copies of the petition for the inclusion of the same area may be filed and shall together be regarded as one petition. All petitions filed prior to the hearing on the first petition shall be considered

by the court the same as though filed with the first petition. In determining whether the requisite number of landowners has signed the petition, the names as they appear upon the tax roll shall be prima facie evidence of their ownership.

(d) At the time of filing the petition or at any time before, and prior to the time of hearing on the petition, a bond shall be filed, with security approved by the court sufficient to pay all expenses connected with the proceedings in the case. If at any time during the proceeding the court determines that the first bond is insufficient, the court may require that an additional bond be obtained within ten days following the court's request. If the petitioner fails to obtain a bond, the petition shall be dismissed.

(e) Immediately after the filing of the petition, the district court of the county where the petition is filed shall fix a place and time between 60 and 90 days after the petition is filed for a hearing. The clerk of the court shall then publish notice of the pendency of the petition and of the time and place of hearing. The clerk of the court shall also mail a copy of the notice by registered mail to:

- (i) the board of directors of the district;
- (ii) the board of county commissioners of each of the counties with land within the area proposed to be included in the district; and
- (iii) the governing body of each of the cities or towns having territory within the area proposed to be included within the district.

(f) After the filing of a petition for inclusion of an additional area and at least 30 days prior to the time fixed by the court for the hearing on the petition, a petition protesting the inclusion of the lands within the district may be filed in the clerk's office of the court where the proceeding for inclusion is pending. The protest petition must contain the signatures, acknowledged in the same form as conveyances of real estate, of at least:

- (i) 35% of the owners of irrigated lands in the area sought to be included, but not within the incorporated limits of a city or town;
- (ii) 20% of the owners of nonirrigated lands and lands within the incorporated limits of a city or town within the area proposed to be included within the district; and
- (iii) a description of each tract of land opposite the name of the signer, with an indication that each tract, together with its improvements, has an assessed value of at least \$300.

(g) A landowner may protest if he:

- (i) did not sign the petition for inclusion; and
- (ii) owns land, including improvements thereon, which had a taxable value of at least \$300 as shown by the last preceding assessment.

(h) If a petitioner signs the petition both as owner of irrigated and nonirrigated land, his name counts only as an owner of irrigated lands.

(i) On the day set for the hearing on the original petition, if it appears to the court that the protesting petition does not meet the requirements of Subsection (f), the court shall dismiss the protesting petition and proceed with the original hearing as provided in this section. If the court finds from the evidence that the protesting petition does qualify, the court shall dismiss the original petition for inclusion. The finding of the court upon the question of valuation, the genuineness of the signatures, and all matters of law and fact incident to this determination shall be final and

conclusive on all parties in interest whether appearing or not, unless within 30 days from entry of the order of dismissal an appeal is taken to the Supreme Court.

(j) (i) Any owner of real property in the proposed area who did not individually sign a petition for the inclusion, but who desires to object to the inclusion, may, on or before ten days prior to the date set for the cause to be heard, file an objection to the inclusion. This objection shall be heard by the court as an advanced case without unnecessary delay.

(ii) An owner of irrigated lands may file a petition asking to have his irrigated lands excluded from the inclusion pursuant to the requirements of Subsection (3)(j)(i). This petition shall be heard by the district court on the date set for the hearing of the petition for inclusion of the area and the district court shall exclude these irrigated lands from the area proposed for inclusion within the district.

(k) If it appears at the hearing that a petition for the inclusion has been signed and presented as provided in Subsections (a) and (b), that the allegations of the petition are true and that no protesting petition has been filed, or if filed has been dismissed as provided in Subsection (3)(i), the court shall:

(i) adjudicate all questions of jurisdiction;

(ii) find that the property described in the petition will, if included, be benefited by the accomplishment of the purposes for which the original district was formed;

(iii) declare the area included in the district;

(iv) declare whether the area is annexed to an existing division, or constitutes a separate division; and

(v) declare whether the area can be properly represented by existing directors or whether the number of directors shall be increased to provide for representation of the area annexed. However, prior to the entry of its decree including such area within the district, the court shall obtain the verified consent of the board of directors of the district to the inclusion of such area.

(l) If the court finds that the petition for inclusion has not been signed and presented pursuant to this section or that the material facts are not as set forth in the petition filed, it shall dismiss the proceedings and adjudge the costs against the signers of the petition in such proportion as it considers just and equitable. An appeal to the Supreme Court shall lie from an order dismissing the proceeding. Nothing in this chapter shall be construed to prevent the filing of a subsequent petition or petitions for similar purposes, and the right to renew such proceeding is expressly granted.

(4) (a) If lands are annexed into a public corporation which corporation is already part of the district described in this chapter and these annexed lands are not located within the district's boundaries, the board may make a finding that these lands are not part of the district, and that these lands are or may be benefited from the service provided by the district. Upon making this finding, the board shall set a time and place for a public hearing to hear objections as to why these lands should not be annexed and included within the district. The secretary of the board shall cause notice of the time and place of the hearing to consider the inclusion

of the lands within the district to be given and published in the county in which the lands are situated. The notice shall:

- (i) state a general description of the lands;
- (ii) state that the lands are being considered for inclusion within the district; and
- (iii) give notice to all interested persons to appear at the time and place named in the notice and show cause, in writing, as to why the lands should not be included within the district. The secretary shall mail a copy of the notice by registered mail to the governing body of the public corporation and to the landowners.

(b) The board shall at the time and place named in the notice or at any time at which the hearing may be adjourned, proceed to hear all objections to the inclusion of the lands within the district. The failure of any interested person to appear or show cause, in writing, shall be taken as an assent on his part to the inclusion of the lands within the district. If, after hearing all objections to the inclusion of the land within the district, the board determines that the lands will be benefited by inclusion within the district, the board shall make an order to that effect. Upon filing the order with the clerk of the court and upon order of the court, the lands shall be included in the district.

(c) A finding by the board that the lands will not be benefited by inclusion within the district shall not preclude the board at any subsequent date from finding that changed conditions or circumstances now benefit the lands. After making this finding the board may renew the proceedings for inclusion of these lands in whole or in part and find that the lands will be benefited by inclusion in the district and make an order to that effect. Upon filing the order with the clerk of the court and upon order of the court, the lands shall be included in the district.

(d) If the board finds that any portion of land to be annexed into the district is presently receiving water from another public water system, the board shall exclude that portion of land from the land to be annexed into the district.

(5) Upon the entry of the decree, the clerk of the court shall transmit to the Division of Corporations and Commercial Code and the county recorder in each of the counties having lands in the area, copies of the findings and decrees of the court. The findings and decrees shall be filed with the Division of Corporations and Commercial Code pursuant to the general laws concerning corporations. Copies shall also be filed in the office of the county recorder in each county in which the district is located where they will become permanent records. The recorder in each county shall receive the fee designated by the county governing body for filing and preservation. The Office of the Lieutenant Governor shall receive fees as may be provided by law for like services in similar cases.

(6) If an order is entered establishing the inclusion of the area into the district, such order shall be final unless within 30 days an appeal is taken to the Supreme Court. The entry of a final order shall conclusively establish the inclusion of the area against all persons, except that the state may attack the order in an action in the nature of a writ of quo warranto, commenced by the attorney general within three months after the decree declaring the area included. The inclusion of the area shall not be directly or collaterally questioned in any suit, action, or proceeding, except as expressly authorized.

(7) Any area included in a district pursuant to this chapter shall be subject to taxes and assessments levied for the payment of indebtedness of the district which was outstanding at the time of the entry of the order for inclusion, and for the payment of indebtedness thereafter incurred as if the area were a part of the district as originally established.

(8) The boundaries of any subdistrict may be changed in the manner provided in this chapter for the change of the boundaries of districts.

History: L. 1941, ch. 99, § 29; C. 1943, 100-11-29; L. 1957, ch. 160, § 1; 1984, ch. 68, § 93; 1988, ch. 3, § 263; 1988, ch. 63, § 6.

Amendment Notes. — The 1988 amendment by ch. 3, effective February 9, 1988, substituted "a taxable value" for "an assessed value" in two places in the first sentence of the first paragraph of Subsection (2) and in the final sentence of the fifth paragraph of Subsection (2).

The 1988 amendment by ch. 63, effective April 25, 1988, subdivided the section; inserted "which are either contiguous or noncontiguous to the district and to each other" in Subsection (2)(a); added Subsection (2)(a)(ii) and deleted from the end of the final paragraph of Subsection (2)(a) "and such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged"; added Subsection (2)(b); rewrote the first sentence of Subsection (2)(d), which had read, "The board shall at the time and place mentioned or at such time or times at which the hearing may be adjourned, proceed to hear the petition and all objections thereto, presented, in writing, by any person showing cause why said petition should not be granted"; inserted "acknowledged in the same form as conveyances of real estate" in Subsections (3)(b)(ii) and (3)(f); in Subsection (3)(d), substituted "before" for "subsequent thereto" in the first sentence, deleted "the inclusion of the area be not affected" at the end of the first sentence, and substituted "within ten days" for "within a time to be fixed to be not less than 10 days distant"; added Subsection (3)(f)(iii); deleted "or lands situated

within a municipality" in Subsection (3)(h); rewrote Subsection (3)(j)(ii), which had read, "Any owner of irrigated lands in said proposed area who has not individually signed a petition for the inclusion of the area within the district and who desires to have his irrigated lands excluded from the area proposed to be included may, on or before ten days prior to the date set for the cause to be heard, file a petition in the said district court asking to have his irrigated lands excluded therefrom"; deleted from the end of the first sentence in Subsection (3)(k)(v) "all as fully as if said area had not been included in the original petition for the organization of the district"; added Subsection (4); and made numerous stylistic changes throughout the section.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Severability Clauses. — Section 2 of Laws 1957, ch. 160 provided: "If any one or more provisions of this act or the application thereof to any person or circumstance shall ever be held to be invalid for any reason, the remaining provisions hereof and the application thereof to persons or circumstances other than those to which it is held to be invalid shall not be affected thereby."

Retrospective Operation. — Laws 1988, ch. 3, § 269 provides that the act "has retrospective operation to January 1, 1988."

Cross-References. — Modification of boundaries of water conservancy districts, notice to State Tax Commission, § 11-12-1.

NOTES TO DECISIONS

Constitutionality.

Subsections (1) and (2) do not contravene the provisions of Art. VIII, § 9 (now § 5), of state Constitution providing for an appeal from final judgments of the district courts. These provisions concern acts of the district board and not of the court, the only duty the court performs

being to sign orders of the district board, a purely ministerial duty. Accordingly, legislature has discretion to refrain from granting a right of appeal from such orders of the district board. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(3).
Key Numbers. — Waters and Water
Courses ⇌ 183½.

73-9-30. Petition for exclusion of lands in district — Procedure — Court order.

The owner or owners in fee of any lands constituting a portion of the district may file with the board a petition praying that such lands be excluded and taken from said district. Petitions shall describe the lands which the petitioners desire to have excluded. Such petition must be acknowledged in the same manner and form as required in case of a conveyance of land and be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings. The secretary of the board shall cause a notice of filing of such petition to be published in the county in which said lands, or the major portion thereof, are located. The notice shall state the filing of such petition, the names of petitioners, descriptions of lands mentioned in said petition, and the prayer of said petitioners; and it shall notify all persons interested to appear at the office of said board at the time named in said notice, showing cause in writing, if any they have, why said petition should not be granted. The board at the time and place mentioned in the notice, or at the time or times at which the hearing of said petition may be adjourned, shall proceed to hear the petition and all objections thereto, presented, in writing, by any person showing cause as aforesaid, why the prayer of the petition should not be granted. The filing of such petition shall be deemed and taken as an assent by each and all such petitioners to the exclusion from the district of the lands mentioned in the petition, or any part thereof. The board, if they deem it not for the best interests of the district that the lands mentioned in the petition, or portion thereof, shall be excluded from the district, shall order that said petition be denied; but if they deem it for the best interest of the district, that the lands mentioned in the district, or some portion thereof, be excluded from the district, and if there are no outstanding bonds of the district, then the board may order the lands mentioned in the petition or some portion thereof, to be excluded from the district. Provided, further, that in case contract has been made between the district and the United States or any agency thereof, no change shall be made in the boundaries of the district unless the secretary of the interior shall assent thereto in writing and such assent be filed with the board. Upon such assent, any lands excluded from the district shall upon order of the court be discharged from all liens in favor of the United States under the contract with the United States or under bonds deposited with its agents. Upon allowance of such petition, the board shall file a certified copy of the order of the board making such change with the clerk of the court and upon order of the court said lands shall be excluded from the district.

History: L. 1941, ch. 99, § 30; C. 1943,
100-11-30.

NOTES TO DECISIONS

Constitutionality.

This section is not open to the objection that it violates the due process clause, because there is no provision by which the court can modify the boundaries of the proposed district. Under this section, the board is given power upon petition to change the boundaries by the exclusion of lands. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

This section does not contravene the provi-

sions of Art. VIII, § 9 (now § 5), of state Constitution providing for an appeal from final judgments of the district courts. This section concerns act of the district board and not of the court, the only duty the court having to perform being to sign orders of the district board, a purely ministerial duty. Accordingly, legislature has discretion to refrain from granting a right of appeal from such orders of the district board. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

73-9-31. Contracts providing for payment in installments — Issuance and sale of bonds — Sinking fund — Covenants — Default — Revenue obligations — Refunding bonds.

(1) (a) To pay for construction, operation, and maintenance of works, and expenses preliminary and incidental to them, the board may enter into contracts with the United States of America or its agencies, providing for payment in installments. To pay for all or part of the cost of the construction or acquisition of any works, to pay for the improvement and extension of them, to pay expenses preliminary and incidental to them, to pay interest on the bonds during acquisition and construction, to provide for necessary reserves, and to pay costs of issuance and sale of the bonds (including, without limitation, printing, registration and transfer costs, legal fees, financial advisor's fees and underwriter's discount), the board may issue the bonds of the district as provided in this section.

(b) The indebtedness or obligation represented by any bonds issued by or any contract entered into by the board may be payable in whole or in part from all or part of the revenues derived by the district from the operation of all or any designated portion of its works, from the proceeds of assessments and taxes levied under this chapter, or from any combination of those revenues, assessments, and taxes.

(c) The indebtedness or obligation represented by any bonds issued by or any contract entered into by the board may be incurred for the acquisition, construction, or both, of all or part of any works, for the improvement or extension of any works, or for a system of works for the distribution of water or for the treatment of water or both, whether or not the works of the district so acquired, constructed, improved or extended include a source of water supply.

(d) These bonds shall be issued and sold in compliance with Chapter 14, Title 11, the Utah Municipal Bond Act, and may be in the form and denominations and have provisions and details permitted by the Utah Municipal Bond Act, except that the bonds shall mature serially or otherwise and contract payment installments shall fall due at any time or times not later than 50 years from their date. The bonds and any evidences of participation interests in the bonds may be issued, executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with Chapter 7, Title 15, the Registered Public Obligations Act, or

any other statute relating to the registration of bonds enacted to meet the requirements of Section 103 of the Internal Revenue Code of 1954, as amended (or any similar or successor federal law), and applicable regulations.

(2) Bonds may be issued hereunder at one time or from time to time. If more than one issue or series of bonds is delivered hereunder, the bonds of the respective issues or series shall have priorities of payment as provided in the proceedings authorizing the bonds.

(3) Any resolution authorizing the issuance of bonds or the entering into of a contract indebtedness or obligation payable in installments hereunder shall provide for the creation of a sinking fund into which shall be paid from the revenues, assessments, and taxes, any or all, pledged to the payment in the authorizing resolution sums fully sufficient to pay the principal of and interest on the bonds or on the contract indebtedness or obligation and to create a reserve for contingencies as required by the resolution. Any resolution so authorizing bonds or the entering into of a contract indebtedness or obligation may contain those covenants with the future holders of the bonds or the other contracting party as to the management and operation of the properties and works of the district, the imposition and collection of fees and charges (including taxes and assessments) for the water and services furnished thereby, the disposition of the fees and revenues, the issuance of future bonds and the incurring of future contract indebtedness or obligations and the creation of future liens and encumbrances against the works and the revenues thereof, the carrying of insurance on the works and the disposition of the proceeds of insurance, the sale, disposal, or alienation of the works, and other pertinent matters deemed necessary or proper by the board to assure the merchantability of the bonds or the execution of the contract. These covenants and agreements may not be inconsistent with this section.

(4) It may be provided in the resolution that any holder of the bonds or any contracting party may by appropriate legal action compel performance of all duties required of the board and the officials of the district by this chapter and the resolution authorizing the bonds or contract. If any bond issued or any contract entered into hereunder is permitted to go into default as to any installment of principal or interest, any court of competent jurisdiction may, pursuant to the application of the holder of any bond or of the other contracting party, appoint a receiver to operate the works of the district and to collect and distribute the revenues thereof under the resolution, this chapter, and as the court may direct.

(5) When the district has issued bonds or entered into a contract and pledged any revenues of the works for the payment of them as provided in this chapter, the district shall impose and collect fees and charges for water and services furnished by the works in that amount and at those rates fully sufficient at all times (in conjunction with the proceeds of available taxes and assessments if the bonds or contract indebtedness or obligation are also payable in part from the proceeds of assessments and taxes levied under this chapter) to pay the expenses of operating and maintaining the works, to provide a sinking fund sufficient to assure the prompt payment of principal of and interest on the bonds or contract indebtedness or obligation as principal and interest fall due, and to provide those funds for reserves and contingencies and for a depreciation fund for repairs, extensions, and improvements to the works as deemed necessary to assure adequate and efficient service, all as

may be required by the resolution. No board or commission other than the board of directors of the district has authority over or is required to approve the making or fixing of fees and charges, the acquisition of property by the district, the issuance of its bonds, or the entering into of a contract.

(6) The board of any district which issues or has issued any bonds under this chapter may issue bonds hereunder for the purpose of refunding all or any part of the outstanding bonds or in part for the purpose of the refunding and in part for the purpose of acquiring, constructing, improving, or extending works for the district. If bonds are issued solely for refunding purposes, the election required by Section 73-9-32 is not a condition precedent to the issuance of the bonds. Refunding bonds so authorized: (a) may be sold and the proceeds thereof applied to or deposited in an escrow and invested pending the retirement of the outstanding bonds; or (b) may be delivered in exchange for the outstanding bonds. The refunding bonds shall be authorized and secured in the manner herein provided for the issuance and securing of other bonds and may, but are not required to, have the same source of security and payment as the bonds refunded.

(7) If bonds have been issued or a contract indebtedness or obligation has been incurred hereunder payable in whole or in part from revenues to be derived from supplying water to the inhabitants of territory which was not at the time of the issuance of the bonds or the entering into of the contract contained within the corporate limits of any municipality or any other district created for the purpose of supplying water to the territory, the district shall thereafter be the sole public corporation or political subdivision authorized to supply water to this area. No municipal corporation or other district into which any part of the territory is incorporated or included has authority either to supply water to the inhabitants of the corporation or district or to grant a franchise for the supplying of the water. Nothing contained in this subsection prevents the modification of this restriction contained by the district if modification does not in any way jeopardize the prompt payment of principal of and interest on the bonds of the district then outstanding or of the payment of installments of indebtedness or obligation under a contract.

History: L. 1941, ch. 99, § 31; C. 1943, 100-11-31; L. 1953, ch. 132, § 1; 1977, ch. 282, § 5; 1981, ch. 285, § 4; 1983, ch. 352, § 2; 1985, ch. 190, § 2.

Amendment Notes. — The 1985 amendment substituted "The indebtedness or obligation represented by any bonds issued by or any contract entered into by the board" for "These bonds" in Subsections (1)(b) and (1)(c); substituted "incurred" for "issued" in Subsection (1)(c); deleted "These bonds may be issued" before "whether" and "through the proceeds of bonds or otherwise" before "include" in Subsection (1)(c); inserted "Chapter 14, Title 11" and "and contract payment installments shall fall due" in the first sentence of Subsection (1)(d); substituted "Chapter 7, Title 15" for "the provisions of" and "statute" for "act of the Legislature" in the last sentence of Subsection (1)(d); inserted "or the entering into of a contract indebtedness or obligation payable in installments" and "or on the contract indebtedness or

obligation" in the first sentence of Subsection (3); inserted "or the entering into of a contract indebtedness or obligation," "or the other contracting party," and "and the incurring of future contract indebtedness or obligations" in the second sentence of Subsection (3); inserted "or the execution of the contract" at the end of the second sentence of Subsection (3); substituted "or any contracting party" for "or of any of the coupons thereto attached" in the first sentence of Subsection (4); inserted "or contract" at the end of the first sentence of Subsection (4); inserted "or any contract entered into," "any installment of," and "or of the other contracting party" in the last sentence of Subsection (4); inserted "or entered into a contract" and inserted "or contract indebtedness or obligation" in two places in the first sentence of Subsection (5); inserted "or the entering into of a contract" at the end of Subsection (5); inserted "or a contract indebtedness or obligation has been incurred" and "or the entering into of

the contract" in the first sentence of Subsection (7); added "or of the payment of installments of indebtedness or obligation under a contract" at the end of Subsection (7); and made minor changes in phraseology.

Internal Revenue Code. — The federal Internal Revenue Code of 1954 has been superseded by the Internal Revenue Code of 1986. Provisions comparable to § 103 of the code of

1954, referred to near the end of Subsection (1)(d), appear as 26 U.S.C. §§ 103 and 149.

Severability Clauses. — Section 3 of Laws 1983, ch. 352 provided: "If any provision of this act, or the application of any provision to any person or circumstance is held invalid, the validity of other provisions or other applications shall not be affected thereby."

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(6).

Key Numbers. — Waters and Water Courses ⇨ 183^{1/2}.

73-9-32. Election on issuance of bonds or incurring contract indebtedness or obligation — When required.

(1) If the majority of a water conservancy district board approves a resolution determining that the interests of the district and the public interest or necessity demand the acquisition, construction, or completion of any water supply, waterworks, improvements, or facilities, or the making of any contract with the United States or other persons or corporations, public or private, to carry out the purposes of the district, wherein an indebtedness or obligation is created, to satisfy which requires an expenditure greater than the ordinary annual income and revenue of the district, the board shall adopt a resolution directing that an election be held to determine whether bonds shall be issued, or an indebtedness or obligation under a contract shall be incurred in the amount and for the purposes specified in the resolution.

(2) The following shall be subject to the conditions provided in Chapter 14, Title 11, the Utah Municipal Bond Act:

- (a) adoption of the resolution calling the election;
- (b) giving notice of the election;
- (c) conduct of the election;
- (d) determination of voters' qualifications; and
- (e) canvassing of election results.

(3) The board may, for purposes of the election:

- (a) treat the entire district as a single precinct or divide the district into precincts; and
- (b) fix polling places.

(4) If bonds or the indebtedness or obligations under a contract are payable solely from revenues derived from the operation of the district's works, no election is required under this section prior to issuance of the bonds or the entering into of the contract, except as provided in Subsection (5).

(5) No district may issue bonds or incur an indebtedness or obligation under a contract payable solely from revenues unless:

- (a) the issuance of the bonds or the incurring of the contract indebtedness or obligation has been approved at an election called and held as provided in this section; or
- (b) the board of directors adopts a resolution declaring the intention of the district to issue bonds or incur a contract indebtedness or liability

payable solely from revenues in the amount and for the purpose provided in the resolution and directs that notice of this intention be published once in a newspaper of general circulation in the district.

(i) The notice of intention shall set forth:

(A) the amount and purpose of the proposed bond issue or contract; and

(B) when and where petitions may be filed requesting the calling of an election to determine whether the bonds may be issued or the contract indebtedness or obligation may be incurred.

(ii) The resolution of the board shall specify the form of the petitions.

(iii) If, within 60 days after the publication of the notice of intention, a petition is filed with the secretary of the board, signed by not less than 5% of the qualified electors of the district, requesting that an election be called to authorize the issuance of the bonds or the incurring of the contract indebtedness or liability payable solely from revenues, then the board shall proceed to call and hold an election as provided in this section. The qualified electors of the district shall be certified to the board, prior to the adoption of the resolution, by the clerks of the counties in which portions of the district are located.

(iv) If no petition is filed, or if the number of signatures filed within the 60-day period is less than the required number, the board of directors may adopt the resolution and proceed to issue the bonds or enter into the contract.

History: L. 1941, ch. 99, § 32; C. 1943, 100-11-32; L. 1977, ch. 282, § 6; 1981, ch. 285, § 5; 1985, ch. 190, § 3; 1988, ch. 146, § 2.

Amendment Notes. The 1985 amendment inserted references to contract indebtedness or obligations throughout the section; inserted "or incurred" in the first sentence of Subsection (1); inserted "Chapter 14, Title 11" in the second sentence of Subsection (1); inserted "or the entering into of a contract" in the last sentence of Subsection (1); rewrote Subsection (2)(a) which formerly read, "No district may issue revenue bonds under this chapter unless"; inserted "or contract" near the beginning of Subsection (2)(b); inserted "to the board, prior to the adoption of the resolution" in the third sentence of Subsection (2)(b); substituted "an election" for "a bond election on the issuance of the bonds" near the end of the third sentence of

Subsection (2)(b); added "or enter into the contract" at the end of the section; and made minor changes in phraseology.

The 1988 amendment, effective April 25, 1988, divided and redesignated the provisions of former Subsection (1) as present Subsections (1) to (4); substituted "in Subsection (5)" for "in Subsection (2) and in Section 73-9-32.5" at the end of Subsection (4); redesignated former Subsection (2) as present Subsection (5) and within that subsection redesignated former Subsection (a) as the present introductory paragraph, redesignated former Subsections (a)(i) and (a)(ii) as present Subsection (a) and the introductory paragraph in Subsection (b), and divided former Subsection (b) into present Subsections (b)(i) to (iv); and made stylistic changes throughout the section.

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(6).

Key Numbers. — Waters and Water Courses ☞ 183½.

73-9-32.5 to 73-9-34. Repealed.

Repeals. — Laws 1988, ch. 146, § 3 repeals § 73-9-32.5, as amended by Laws 1985, ch. 190, § 4, requiring an election in districts including portions of five or more counties, effective April 25, 1988.

Sections 73-9-33 and 73-9-34 (L. 1941, ch. 99,

§§ 33, 34; C. 1943, 100-11-33, 100-11-34), relating to the manner of publication of a resolution to issue bonds, the conduct of the bond election, and the canvass of returns, were repealed by Laws 1977, ch. 282, § 8.

73-9-35. Majority authorized issuance of bonds — Resubmission of proposition.

In the event that it shall appear from said returns that a majority of said qualified electors of the district who shall have voted on any proposition submitted hereunder at such election voted in favor of such proposition, the district shall thereupon be authorized to incur such indebtedness or obligations, enter into such contract or issue and sell such bonds of the district, all for the purpose or purposes and object or objects provided for in the proposition submitted hereunder and in the resolution therefor, and in the amount so provided in such resolution. Submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at any subsequent election called for such purpose.

History: L. 1941, ch. 99, § 35; C. 1943, 100-11-35; L. 1977, ch. 282, § 7.

73-9-36. Board may petition district court for judicial determination of its acts — Powers — Taxes — Contracts.

The board may, in its discretion, at any time file a petition in the court, praying a judicial examination and determination of any power conferred hereby or by any amendment hereto or of any tax or assessment levied or of any act, proceeding or contract of the district, whether or not said contract shall have been executed, including proposed contracts for the acquisition, construction, maintenance or operation of works for the district. Such petition shall set forth the facts whereon the validity of such power, assessment, act, proceeding or contract is founded and shall be verified by the president of the board. Notice of the filing of said petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any contract or contracts, therein mentioned, may be examined. Said notice shall be served by publication at least once a week for five consecutive weeks (five issues) in a newspaper of general circulation in the county in which the principal office of the district is located, and by posting the same in the office of the district at least thirty days prior to the date fixed in said notice for the hearing on said petition. Any owner of property in the district or person interested in the contract or proposed contract may appear and demur to or answer said petition at any time prior to the date fixed for said hearing or within such further time as may be allowed by the court; and the petition shall be taken as confessed by all persons who fail

so to appear. The said petition and notice shall be sufficient to give the court jurisdiction and, upon hearing, the court shall examine into and determine all matters and things affecting the question submitted, shall make such findings with reference thereto and render such judgment and decree thereon as the case warrants. Costs may be divided or apportioned among the contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other similar cases, except that such review must be applied for within thirty days after the time of the rendition of such judgment, or within such additional time as may be allowed by the court within thirty days. The Code of Civil Procedure shall govern in matters of pleading and practice where not otherwise specified herein. The court shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties.

History: L. 1941, ch. 99, § 36; C. 1943, 100-11-36.

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(5).
Key Numbers. — Waters and Water
Courses ⇌ 183½.

73-9-37. Due notice — Jurisdiction of district court not lost for failure to give.

In any and every case where a notice is provided for in this act, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated, but the court shall in that case order due notice to be given, and shall continue the hearing until such time as notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

History: L. 1941, ch. 99, § 38; C. 1943, 100-11-37.

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(1).
Key Numbers. — Waters and Water
Courses ⇌ 183½.

73-9-38. Cases hereunder to be heard at earliest practicable moment.

All cases in which there may arise a question of the validity of the organization of a water conservancy district, or a question of the validity of any proceeding under this act shall be advanced as a matter of immediate public interest and concern, and heard at the earliest practicable moment. The courts shall be open at all times for the purposes of this act.

History: L. 1941, ch. 99, § 38; C. 1943, 100-11-38.

73-9-39. Act to be liberally construed.

This act being necessary to secure and preserve the public health, safety, convenience and welfare, and for the security of public and private property, it shall be liberally construed to effect the purposes of this act.

History: L. 1941, ch. 99, § 39; C. 1943, 100-11-39.

COLLATERAL REFERENCES

C.J.S. — 82 C.J.S. Statutes § 315.
Key Numbers. — Statutes ⇌ 179.

73-9-40. Partial invalidity — Savings clause.

Should the courts of the state or of the United States declare any section, provision, paragraph, clause, sentence, phrase, or part thereof, of this act invalid or unconstitutional, or in conflict with any other section, provision, paragraph, clause, sentence, phrase, or part thereof, of this act then such decision shall affect only the section, provision, paragraph, clause, sentence, phrase, or part thereof, declared to be unconstitutional or unauthorized, and shall not affect any other part whatsoever of this act. The legislature of the state of Utah hereby declares that it would have passed this act and each section, provision, paragraph, clause, sentence, or phrase thereof, irrespective of the fact that any one or more of the other sections, provisions, paragraphs, clauses, sentences, or phrases, or parts thereof, be declared invalid or unconstitutional.

History: L. 1941, ch. 99, § 40; C. 1943, 100-11-40.

NOTES TO DECISIONS

Application of severability provision.

Even though § 73-9-7, prior to its amendment in 1945, was found to be unconstitutional insofar as it denied the right of appeal, it was a provision easily separable from the rest of the

section and act and did not affect any of its other provisions. *Patterick v. Carbon Water Conservancy Dist.*, 106 Utah 55, 145 P.2d 503 (1944).

COLLATERAL REFERENCES

C.J.S. — 82 C.J.S. Statutes § 94.
Key Numbers. — Statutes ⇌ 64(2).

73-9-41. Acts in conflict declared nonoperative as to this act.

All acts or parts of acts conflicting in any way with any of the provisions of this act in regard to the improvements or improvement districts, or regulating or limiting the power of taxation or assessments, or otherwise interfering with the accomplishment of the purposes of this act according to its terms, are hereby declared nonoperative and noneffective as to this act as completely as if they did not exist. But all such acts and parts of acts shall not in any other way be affected by this act.

History: L. 1941, ch. 99, § 41; C. 1943, 100-11-41.

COLLATERAL REFERENCES

C.J.S. — 82 C.J.S. Statutes § 285.

Key Numbers. — Statutes ⇨ 157.

73-9-42. Validation of proceedings — Changes in validated contracts, bond proceedings or bonds authorized.

That wherever proceedings have been heretofore adopted under authority of the Water Conservancy Act purporting to create any conservancy district thereunder all proceedings had in connection with the creation of each such district are hereby validated, ratified and confirmed notwithstanding any failure to comply with any one or more pertinent statutory provisions and each such district is declared to be a validity created and existing district under authority of said law. It is expressly found and determined that all taxable property lying in each such district will be benefited by the construction of the improvements to be constructed by such district to an amount not less than the aggregate of the taxes and assessments to be levied against such property to pay for the cost of such improvements. All proceedings had in connection with the appointment election and organization of board of directors for each such district are ratified and approved and each such board of directors is declared to be de facto and de jure governing body of each such district. Where in any such district an election has been heretofore held on the approval of a contract with the United States of America or on the issuance of the bonds of the district or both, all proceedings had in connection with the calling and holding of each such election are validated, ratified and confirmed despite any irregularity which may have occurred therein and any contract so approved by any such election and any bonds so authorized at any such election are validated and confirmed and the board of directors and officers of each such district are authorized and empowered to proceed to do all things necessary to the execution of such contract or to the issuance of such bonds as the case may be and each such contract when duly executed and all such bonds when delivered and paid for are declared to be valid and binding obligations of such district in accordance with the terms thereof and to be fully negotiable for all purposes. All construction contracts heretofore entered into by any such district for the construction or acquisition of works or facilities for such dis-

tract are validated, ratified, and confirmed and declared to be valid obligations of such district in accordance with the terms thereof. The board of directors of any such district may make such changes in any contract or in any bond proceedings or bonds hereby validated as may in its opinion be desirable for the best interests of such district without in any wise impairing or making ineffective any of the curative effect of this section. Any such change or changes may be so made despite the fact that such change or changes may be inconsistent with the proceedings at which any such contract, if voted at an election, or any such bonds, where voted, and no new election to approve or authorize such change or changes shall be necessary.

History: L. 1953, ch. 132, § 2.

Severability Clauses. — Section 3 of Laws 1953, ch. 132 provided: "If any one or more provisions of this act shall ever be held to be

invalid or ineffective for any reason, such holding shall not affect the enforceability of the remaining provisions of this act."

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243.

Key Numbers. — Waters and Water Courses ⇨ 183½.

73-9-43. Validation of proceedings and actions — Changes in validated contracts, bond proceedings or bonds authorized.

All proceedings that have been adopted and actions taken before this act takes effect, under authority of the Water Conservancy Act, purporting to create any water conservancy district thereunder or purporting to provide for the inclusion of any additional area or areas in any such district, including all petitions filed and all notices given, published and mailed in connection with any such creation and any such inclusion, are hereby validated, ratified and confirmed, notwithstanding any failure to comply with any one or more pertinent statutory provisions and each such district as so created or enlarged is declared to be a validly created and existing district. It is expressly determined that all taxable property lying in each such district shall be benefited by any improvements constructed before or after this act takes effect to an amount not less than the aggregate of the taxes and assessments levied against such property to pay for the cost of such improvements. All proceedings and actions taken with respect to the appointment, election and organization of a board of directors and officers thereof for each such district are validated, ratified and confirmed and each such board of directors is declared to be the de facto and de jure governing body of each such district. Where in any such district an election has been held, before this act takes effect, on the question of approving a contract with the United States of America or on the question of the issuance of the bonds of the district, or both, all proceedings and actions concerned with the calling, holding and conduct of any such elections are validated, ratified and confirmed despite any irregularities which may have occurred in connection therewith. Any contract so approved at such an election and any bonds so authorized at such an election are validated, ratified and confirmed. The board of directors and officers of each such district may do all things necessary to execute any such contract or issue such bonds,

and each such contract when executed and all such bonds when delivered and paid for shall be valid and binding obligations of such district in accordance with the tenor and terms thereof. Any contracts made by such district for the construction or acquisition of works or facilities for such district are validated, ratified and confirmed and shall be valid obligations of such district in accordance with the terms thereof. Changes made after this act takes effect by the board of directors of any such district in any contract, bond proceedings or bonds hereby validated shall be considered not to nullify any curative effect of this action.

History: C. 1953, 73-9-43, enacted by L. 1969, ch. 231, § 1.

Severability Clauses. — Section 2 of Laws 1969, ch. 231 provided: "If any one or more sentences, clauses, phrases, or provisions of this act or the application thereof to any set of circumstances shall be held by final judgment

of any court of competent jurisdiction to be invalid, the remaining sentences, clauses, phrases and provisions hereof and the application of this act to other sets of circumstances shall nevertheless continue to be valid and effective, the legislature hereby declaring that all provisions of this act are severable."

CHAPTER 10

BOARD OF WATER RESOURCES — DIVISION OF WATER RESOURCES

Section		Section	
73-10-1.	State's policy — Creation of revolving fund — General construction of act.	73-10-9, 73-10-10.	Repealed.
73-10-1.5.	Board of Water Resources — Creation — Transfer of powers and duties.	73-10-11.	Counsel to board and representative — Utilization of other departments — Duty of executive secretary of board to collect on water contracts.
73-10-2.	Board of Water Resources — Members — Appointment — Terms — Vacancies.	73-10-12.	Appropriations.
73-10-3.	Organization of board — Interstate conferences — Designation of representative — Salary — Compacts — Ratification required.	73-10-13.	Appropriation for loan fund.
73-10-4.	Powers and duties of board.	73-10-14.	Repealed.
73-10-5.	Selection of project by board — Preparation of plans and estimate of cost — Contracts by board.	73-10-15.	State water plan — Agencies to cooperate in formulation of plan.
73-10-6.	Making water available to citizens of state — Assessment of charges against water users — Water Resources Construction Fund.	73-10-16.	State water plan — Payment for special studies and investigations.
73-10-7.	Title to projects — Contractual powers of board.	73-10-17.	State water plan — Authority of other agencies not impaired.
73-10-8.	Water Resources Construction Fund — Creation and nature of fund — Use — Contributions — Interest on moneys resulting from remarketing loans — Retainage escrow.	73-10-18.	Division of Water Resources — Creation — Power and authority.
		73-10-19.	Director's power and authority.
		73-10-20.	Loans for water systems — Legislative declaration.
		73-10-21.	Loans for water systems — Eligible projects.
		73-10-22.	Water Resources Cities Water Loan Fund — Annual appropriation — Interest on moneys resulting from remarketing loans.
		73-10-23.	Loans for water systems — Board of Water Resources authority — Procedure.